

INDIGENOUS-CROWN RELATIONS IN CANADA AND THE YUKON:
THE *PEEL WATERSHED* CASE, 2017

By:

Lauren Alexandra Baranik, B.A., B.Ed.

A Thesis Submitted in Partial Fulfillment of the Requirements

for the Degree of

Master of Arts

in

Arctic and Northern Studies

University of Alaska Fairbanks

August 2019

APPROVED:

Mary F. Ehrlander, Committee Chair

Leslie McCartney, Committee Member

Victoria Castillo, Committee Member

Alexander Hirsch, Committee Member

Mary F. Ehrlander, Chair

Department of Arctic and Northern Studies

Todd Sherman, Dean

College of Liberal Arts

Michael Castellini, *Dean of the Graduate School*

ABSTRACT

The history of Indigenous-Crown relations in Canada has varied regionally and temporally. With the Constitution Act of 1982, however, Canada entered a new era. Section 35 of the Constitution recognized Indigenous treaty and land rights, and the Supreme Court of Canada has consistently interpreted this section liberally in favor of Canada's Indigenous Peoples. The Court has upheld the honour of the Crown in emphasizing the national and sub-national governments' duty to consult diligently when engaging in development on the traditional territories of First Nations, Metis, and Inuit. The "citizens-plus" model of asserting and protecting Indigenous rights, first coined in the Hawthorn Report of 1966, has proved effective in these court cases, most recently in the Yukon's *Peel Watershed* case from 2014 to 2017. Yet, engaging with the state to pursue and to invoke treaty rights has forced socio-economic and political changes among Yukon First Nations that some scholars have argued are harmful to the spiritual and physical wellbeing of Indigenous communities, mainly through alienation from their homelands. The *Peel Watershed* case demonstrates the unique historical development of Yukon First Nations rights and the costs and benefits of treaty negotiations and asserting Indigenous rights.

ACKNOWLEDGEMENTS

First off, I would like to thank my committee members who provided invaluable guidance and expertise throughout my research and writing. Mary, I was so grateful to have you as the chair of my committee and to learn from you. Your detailed and supportive feedback kept me on track to finish and helped me to convey effectively what I wanted to communicate. Leslie, your experience and knowledge of working in the NWT and your attention to detail in your feedback was useful throughout, but specifically when writing about the history of Indigenous-Crown relations and the evolution of the Numbered Treaties. I also really appreciate how readily available and supportive you were whenever I felt stuck in my writing or just needed to chat with someone. Victoria, I greatly relied on your knowledge of Yukon First Nations history and culture. Your quick, comprehensive feedback was greatly appreciated, especially during May and June when you were busier. Alex, thank you for your comments and introducing me to a number of authors who allowed me to analyze Indigenous-Crown relations in a new light.

To the University of Alaska's Political Science Department, I would like to say thank you to all the professors I had the pleasure of taking a course with. Chanda, thank you for taking the time to sit down with me on a number of occasions to listen to my thought process and provide invaluable resources and advice. To both you and Dr. Lovecraft, I am grateful to have been your TA and to have learned about the United States' politics and governance that led me to learn more about Canada's political system.

Thank you, Ben, Karsten, Terrence, and Line for listening to my practice defences. That first one was rough.

I would like to say thank you to Selkirk First Nation community members who allowed me to listen to their stories. What I learned over the three years of living in Pelly Crossing I

could not have learned in university or from a book. My experiences there led me to realize how ignorant I was of the issues facing Indigenous communities and the colonial history of Canada which in turn led me to pursue this thesis. Mussi Cho.

And lastly, to my family. Mum and Dad, my life experiences, including this thesis, have been possible because of the supportive, empathetic, and loving foundation that you have provided for me my whole life. You were always just a phone call away to provide encouragement throughout this process. Erica, I know that road trip to Anchorage was not the most entertaining as I was studying the whole time but having you there when I wrote the GRE was invaluable. And to Aurora, you were with me every day, whether you wanted to be or not. Your company is always much appreciated.

TABLE OF CONTENTS

Abstract.....	i
Acknowledgements.....	ii
Table of Contents.....	iv
List of Figures.....	vi
List of Abbreviations	vii
Introduction.....	1
Chapter One: Literature Review and Methods	9
LITERATURE REVIEW	9
<i>Historical Analysis</i>	10
<i>Indigenous Rights in Canada</i>	18
<i>Literature Review Synthesis and Conclusion</i>	22
METHODS	23
Chapter Two: History of Indigenous-Crown Relations in Canada to the Modern Land Claims Era	25
FRENCH CROWN-INDIGENOUS RELATIONS.....	28
BRITISH CROWN-INDIGENOUS RELATIONS	30
<i>The Department of Indian Affairs as a Branch of the Military (1755-1830)</i>	30
<i>The Department of Indian Affairs under Civil Jurisdiction (1830-1867)</i>	40
CANADIAN CROWN-INDIGENOUS AFFAIRS.....	44
<i>Northwestward Expansion (1870-1920s)</i>	44
<i>The Department of Indian Affairs in the Northwest (the 1920s to 1944)</i>	56
<i>The Rise of Indigenous Rights (1940s-1969)</i>	62
Chapter Three: The Modern Land Claims Era.....	68
LIBERAL GOVERNMENT – PIERRE ELLIOT TRUDEAU (1968-1979; 1980-1984).....	68
CONSERVATIVE GOVERNMENT - BRIAN MULRONEY (1984-1993).....	71
LIBERAL GOVERNMENT – JEAN CHRÉTIEN (1993-2003) AND PAUL MARTIN (2003-2005)	74
CONSERVATIVE GOVERNMENT – STEPHEN HARPER (2006-2015).....	76
<i>The honour of the Crown</i>	77
LIBERAL GOVERNMENT – JUSTIN TRUDEAU (2015-PRESENT).....	81
Chapter Four: History of Indigenous-Crown Relations in Yukon to the Modern Land Claims Era	86
PRE-CONTACT	88
EARLY FUR TRADE IN THE YUKON (1800 TO 1893)	90
NORTHWESTWARD EXPANSION (1893 TO 1910s).....	94
THE DEPARTMENT OF INDIAN AFFAIRS IN THE YUKON (1920s TO 1960)	106
<i>Inter-War Years</i>	106

<i>World War II</i>	110
THE RISE OF INDIGENOUS RIGHTS IN THE YUKON (1950s TO 1969)	116
Chapter Five: The Modern Land Claims Era in the Yukon	120
LIBERAL FEDERAL GOVERNMENT – PIERRE ELLIOT TRUDEAU (1968-1979; 1980-1984)	120
<i>Conservative Territorial Government – Chris Pearson (1978 – 1985)</i>	123
CONSERVATIVE FEDERAL GOVERNMENT - BRIAN MULRONEY (1984-1993).....	124
<i>New Democratic Territorial Government – Tony Penikett (1985-1992)</i>	124
LIBERAL FEDERAL GOVERNMENT – JEAN CHRÉTIEN (1993-2003) AND PAUL MARTIN (2003-2005)	126
<i>Conservative Territorial Government – John Ostashek (1992-1996)</i>	126
<i>New Democratic Territorial Government – Piers McDonald (1996-2000)</i>	129
<i>Liberal Territorial Government – Pat Duncan (2000-2002)</i>	130
<i>Conservative Territorial Government – Dennis Fentie (2002-2011)</i>	130
CONSERVATIVE FEDERAL GOVERNMENT – STEPHEN HARPER (2006-2015).....	132
<i>Conservative Territorial Government – Darrell Pasloski (2011-2016)</i>	132
LIBERAL FEDERAL GOVERNMENT – JUSTIN TRUDEAU (2015-PRESENT)	134
<i>Liberal Territorial Government – Sandy Silver (2016-present)</i>	134
CONCLUSION	136
Chapter Five: Indigenous Rights.....	138
HUMAN RIGHTS MAKE WAY FOR INDIGENOUS RIGHTS.....	138
“CITIZENS-PLUS” MODEL	140
SELF-RECOGNITION	146
CITIZENS PLUS VERSUS SELF-RECOGNITION	151
CITIZENS PLUS OR SELF-RECOGNITION IN THE YUKON.....	154
CONCLUSION	157
Chapter Six: Peel Watershed Case.....	158
ANALYSIS: DUTY TO CONSULT AND <i>HONOUR OF THE CROWN</i> IN THE <i>PEEL WATERSHED CASE</i> . 165	
<i>PEEL WATERSHED CASE</i> – CITIZENS PLUS OR SELF-RECOGNITION?	166
CONCLUSION	170
Conclusion	172
Bibliography	178
COURT CASES.....	187
BILLS.....	188

LIST OF FIGURES

Figure 1: Map of Indigenous groups in Canada.....	26
Figure 2: Map of Canada in 1825	31
Figure 3: Map of the historic treaties in Canada	43
Figure 4: Map of the route miners took to the Klondike Gold Rush.....	96
Figure 5: Map of the Yukon.....	108
Figure 6: Graph of fur prices in Canada from 1920 to 1945	112
Figure 7: Map of the Yukon First Nations' Traditional Territories	115

LIST OF ABBREVIATIONS

<u>Abbreviation</u>	<u>Name</u>
AANDC	Aboriginal Affairs and Northern Development
CGA	Cooperation in Governance Act
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada
CLCP	Comprehensive Land Claims Policy
CYFN	Council of Yukon First Nations
CYI	Council of Yukon Indians
DIAND	Department of Indian Affairs and Northern Development
DTA	Yukon Northern Affairs Program Devolution Transfer Agreement
HBC	Hudson Bay Company
ILO	International Labour Organization
JBNQA	James Bay and Northern Quebec Agreement
LCAC	Land Claims Agreement Coalition
LTLA	Lasting Treaties: Lasting Agreements
MLA	Member of the Legislative Assembly
NDP	New Democratic Party
NWC	Northwest Company
NWMP	North West Mounted Police
NWT	Northwest Territories
PC	Progressive Conservatives
PWPC	Peel Watershed Planning Commission
RCMP	Royal Canadian Mountie Police
TRC	Truth and Reconciliation Commission
TTFCT	Together Today for Our Children Tomorrow
UFA	Umbrella Final Agreement
YFN	Yukon First Nation
YG	the Conservative territorial party of the Yukon, Yukon Government
YNB	Yukon Native Brotherhood

INTRODUCTION

Indigenous-Crown relations have greatly shaped the history of Canada. From the first arrival of French explorers and traders in New France, the French Crown realized the importance of respectful relations with Indigenous peoples. *The Royal Proclamation of 1763* demonstrates British reliance on a cooperative relationship with Indigenous Peoples through their promise to protect First Nations and their lands. As the Americans replaced the French as their main adversary, the British continued to rely heavily on their Indigenous allies to maintain their stronghold in North America. After the conclusion of the War of 1812, increasing immigration in the 19th century shifted the British Government's view of Indigenous Peoples from being a much-needed ally in maintaining their colonies to a hindrance to colonization as the growing non-Indigenous, settler society pushed westward, demanding more land.

With the formation of Canada as an independent state in 1867, the Civil Services Department focused on Canada's expansionist goal, using aggressive assimilation policies to control the Indigenous population. A series of Numbered Treaties acquired lands for the Government of Canada in the west, making way for ever more Europeans to settle the vast region. Owing to the deplorable conditions under which they were forced to live, Indigenous Peoples' numbers declined precipitously during this era. By the conclusion of the eleventh Numbered Treaty in 1921, the treaty terms made clear the federal government's aim to resolve the "Indian problem," that is, Indigenous-held land that stood in the way of westward expansion, through forced assimilation of those who survived. The Yukon at this time was beneficially left out of these negotiations. Yukon Indigenous Peoples had seen a heavy wave of in-migration of non-Indigenous miners that had ebbed by 1900, leaving relatively few colonizers. *The Yukon Territory Act of 1898* had not imposed significant federal government control in the remote

region, which faded into the background as the Canadian Government faced wars and the Great Depression, and while it had sufficient territory to satisfy settler demands.

Beginning in 1913, the Department of Indian Affairs under the leadership of Duncan Campbell Scott intensified its assimilationist policies, limiting the cultural and physical freedoms of Indigenous Peoples. And yet, by Campbell Scott's retirement in 1932, the Government of Canada had begun to recognize the failure of the department to solve the growing hardships Indigenous Peoples experienced, including poverty and famine. The Yukon during the early twentieth century lacked the resources to enact aggressive assimilationist policies. Instead, government officials encouraged Yukon Indigenous Peoples to maintain their traditional lifestyles. This "hands off" policy changed with WWII and the rapid construction of the Alaska Highway. Its completion provided greater transportation and communication infrastructure and encouraged many Indigenous communities to relocate along the route. The infrastructure and the increase in government officials at the Yukon's Department of Indian Affairs led to more pronounced control of Indigenous Peoples in the territory by the 1950s.

Following WWII, the concept of human rights expanded internationally, leading to greater recognition of Indigenous Rights. In Canada, Parliament took steps to mitigate the harms caused by earlier assimilationist policies. The House of Commons and Senate formed a Joint Committee to revise the *Indian Act* in the 1950s to allow greater Indigenous agency, including the right to raise funds for legal purposes. These changes paved the way for the formation of Indigenous political organizations and would allow communities to use the judicial system to pursue their political goals. The 1966 *Survey of the Contemporary Indian of Canada: Economic, Political, Educational Needs and Policies* proposed the concept of "citizens-plus" that would acknowledge the additional rights of Indigenous Peoples in Canada, beyond their rights as

Canadian citizens. The report argued that this model would balance the years that Indigenous Peoples had been treated as “citizens-minus.” The Liberal Government of Pierre Elliott Trudeau rejected the notion of special treatment of any particular group, however, and sought to assimilate Indigenous Peoples under the promise of equality, with the release of the *White Paper*, 1969. Indigenous activists’ vociferous objections to the White Paper caused a ripple effect through Canada, producing a development that countered Trudeau’s Liberalist ideal. The Land Claims Commission was created, initiating the Modern Land Claims Era.

In 1973, the Yukon Indian Brotherhood was the first group to approach the Canadian Government in the Modern Land Claims Era with a land claim and spent twenty years negotiating terms of their settlement with the Government of Canada. The Government of Yukon won a seat at the table by the mid-1980s, reflecting the powers it had gained through devolution from the federal government by this time. Over the twenty-year negotiation process, the Government of Canada increasingly recognized Indigenous rights. *The Constitution Act of 1982* solidified the constitutional duty of the Crown to recognize Indigenous Rights, and Indigenous communities have increasingly called on Section 35 to assert their Indigenous and treaty rights through the judicial system. Meanwhile, continued Indigenous activism has led to the development of new concepts of how best to realize Indigenous Rights within Canada. Perhaps most significantly, the concepts of treaties as ongoing processes and Indigenous self-government have gained favour.

In 1993 the Umbrella Final Agreement (UFA) was signed between the Council of Yukon Indians, the Government of Canada, and the Government of Yukon. In the following years, individual Yukon First Nations (YFNs) signed their specific land claims and self-government agreements. The duty of the Crown to uphold its treaty rights, articulated in the 1982

Constitution, has strengthened treaty agreements in the post-1982 era, including the UFA. Indigenous Peoples have found greater support within the judiciary as rulings have upheld the *honour of the Crown* through its duty to consult and its duty to do so diligently, as seen in a several decisions that the Canadian Government failed to negotiate with Indigenous communities effectively when initiating development projects on their lands. As attorney Bill Gallagher explains, the “plus” rights proposed in the “citizens-plus” model have come to fruition through these rulings. Increasingly, court decisions have defined Indigenous-Crown relations as the federal government has increasingly supported the resource development sector.

The concepts of self-recognition and grounded normative theory have grown in tandem with the rise of self-government and increasing acknowledgement of Indigenous scholars’ perspectives in Canada. Self-recognition and grounded normative theory join to assert that Indigenous Peoples will only achieve well-being by protecting their lands and becoming more connected to their traditional territories. Historically, as Indigenous communities have engaged in treaty negotiations, their societal structures have altered to reflect Canada’s Parliamentary system, which in turn has increased their dependence on the federal government and capitalism. This shift has pushed many Indigenous governments to engage in resource extraction initiatives to achieve economic development in their communities. The transition toward capitalistic economic development has further disconnected people from the land, compromising individual and community well-being. And yet, in many cases, Indigenous communities are left with no viable alternative means of producing revenue for their communities whose members rely on amenities that cannot be provided by the land. Yet, Indigenous Peoples have not always chosen this route. In some instances, like the 2017 *Peel Watershed* case, they have opposed resource development, relying on their “citizens-plus” rights to protect their lands for future generations.

The *Peel Watershed* case concerned a large area of land in northern Yukon being considered for resource development under the Conservative Yukon Government (YG). From 2006 to 2015, as Conservatives held power federally, Conservatives in the Yukon pursued a policy of increasing economic development in the Territory. They neglected the Crown's duty to consult as they sought potential revenue in the Peel Watershed region. The UFA clearly states in *Chapter 11: Land Use Planning* that the Crown is obligated to engage in a land use planning process that incorporates the Yukon public, government officials and Yukon First Nations (YFN). Due to the YG's disengagement from this process, the Supreme Court of Yukon ruled that the Government had failed in its duty to consult and that the land use planning must resume. The YFNs and environmental groups involved in this case objected to allowing the Government of Yukon further input in resumed land use planning, because it had neglected to participate at earlier stages. Four YFNs: the Nacho Nyäk Dun, Tr'ondëk Hwëch'in, Vuntut Gwitchin, Teetl'it Gwich'in; the Canadian Parks and Wilderness Society Yukon; and Yukon Conservation Society appealed the decision to the Supreme Court of Canada. The Supreme Court held that the land use planning stage would resume at a point at which the Government of Yukon would have limited ability to alter the final plan. This meant that the Peel Watershed would be 80 percent protected with only 20 percent available for resource development.

The *Peel Watershed* case exemplifies Indigenous Peoples' reliance on their "citizens-plus" rights that have become increasingly detailed by the judicial system through land disputes. Ultimately, the twenty-year UFA negotiations process benefitted YFNs, providing stronger representation of Indigenous concerns and greater protection of their lands in the document, as seen through the *Peel Watershed* case. Importantly, this land dispute arose after the judiciary had set a precedent in *Haida v. British Columbia* (2004), upholding the Crown's duty to consult and

to do so diligently. Yet, the governments of Canada continue to struggle with fulfilling this duty; consequently, Indigenous Peoples use the judicial system to remind state powers of this obligation. If these land disputes subside as “citizens-plus” rights receive greater recognition, reliance on grounded normative theory and self-recognition in pursuit of Indigenous political aims may become more practicable. With their land protected, communities can form self-governments that reflect their cultural values and place-based values, and they can engage in resource development as they see fit.

This thesis provides an historical analysis of Indigenous-Crown relations in Canada, focusing on the unique development of Crown relations and treaty negotiations in the Yukon Territory. This history is then considered in the analysis of two Indigenous Rights models in Canada and how they apply to the 2017 *Peel Watershed* case. The questions that have guided the research have been: 1) How have evolving government interests shaped Crown policies toward Indigenous Peoples and Crown-Indigenous relations in Canada? 2) How did the burgeoning international human rights movement following WWII and repatriation of Canada's Constitution in 1982 incite Canada's Modern Land Claims Era? 3) How did the Yukon's remoteness affect government interests, Indigenous policies, and Crown-Indigenous relations in the territory? 4) Moving forward, will the “citizens-plus” model or the self-recognition model of pursuing Indigenous rights be more effective in protecting Indigenous land rights and promoting well-being in Indigenous communities in Canada? 5) How does the 2017 *Peel Watershed* case illustrate the Yukon's unique history and the marked change in Crown-Indigenous relations in Canada?

Chapter One of this thesis provides a literature review of published works related to this inquiry and identifies the gap in the literature on the Yukon's experience with land claims, in particular with developments since the 1993 UFA. It also explains my methodology. Chapters Two through Five provide historical analysis of Indigenous-Crown relations in all of Canada, followed by the Yukon, to illustrate the unfolding of a unique situation in the remote territory compared to the rest of Canada. Chapter Two begins with the French Crown's early attempts at colonization and their eventual loss of power to the British in North America. The chapter follows the transition of Indigenous Peoples from allies of the British Crown against the French and then Americans, into the peacetime after 1812, and the effects of increased settlement in British North America. From 1812 to 1867, the British Crown devolved power to the Canadian Crown, which sets its sights on land acquisition and expanding the new country westward. Chapter Two ends with a brief overview of Canada's early days and the effects of aggressive assimilation policies on Indigenous-Crown relations until the 1960s, when Indigenous rights expanded in Canada. Chapter Three begins with the Canadian Crown's recognition of Indigenous lands rights through the creation of the Native Land Claims Commission in 1971, and the Modern Land Claims Era. The chapter examines how various political parties have attempted to create effective Indigenous policies and how with the creation of Section 35 of the 1982 Constitution, Indigenous Peoples have come to rely on the Courts to assert their land and treaty rights. Chapters Four and Five address the history of Indigenous relations in the Yukon, in the pre-Modern Land Claims Era and in the current era, respectively, to demonstrate the unique developments that occurred in the territory compared to the rest of Canada. Chapter Five also examines how different political parties impacted Indigenous-Crown relations, including at the territorial level. Chapter Six analyzes two concepts related to Indigenous Rights in Canada: the

“citizens-plus” model and grounded normative theory, which is realized through self-recognition. It explains the history of the “citizens-plus” model, its evolution in the judicial system, and how the “plus” rights have been realized in land claims cases. Grounded normative theory or self-recognition, a more recent proposal, seeks to re-establish Indigenous well-being through reconnecting with the land; it faces challenges today, especially as Indigenous Peoples must engage with the Canadian political-judicial system to secure their lands. The final chapter comprises a case study of the *Peel Watershed* (2017) decision, regarding a large region in the north of the Yukon. This land dispute that invoked the UFA to prevent the Government of Yukon’s one-sided development plan, saw the “citizens-plus” model in action. The case also provides insight into how YFNs have furthered their self-recognition through their treaty rights.

The historical analysis provides the framework within which the evolution of the “citizens-plus” model and grounded normative theory can be understood. The *Peel Watershed* case study provides evidence of these theories in action and the challenges that both present. If Canada, and specifically the Yukon, holds true to its commitment to improve Indigenous-Crown relations, then it will have to reflect on past wrongs and look for sustainable, cooperative solutions for a better future.

CHAPTER ONE: LITERATURE REVIEW AND METHODS

Literature Review

This literature review considers the historiography of the relationship between Indigenous Peoples and colonial powers acting through the Department of Indian Affairs or as it is called today, Crown-Indigenous Relations and Northern Affairs Canada¹, with a strong focus on the northwest of Canada specifically the Yukon Territory. I have divided the resources into two themes to treat the literature regarding Indigenous-Crown or colonial relations: Historical Analysis and Contemporary Discussions on Indigenous Rights. In the first section, I treat the three questions: 1) How have evolving government interests shaped Crown policies toward Indigenous Peoples and Crown-Indigenous relations in Canada? 2) How did the burgeoning international human rights movement following WWII and repatriation of Canada's Constitution in 1982 incite Canada's Modern Land Claims Era? and 3) How did the Yukon's remoteness affect government interests, Indigenous policies, and Crown-Indigenous relations in the territory? In the second section, I treat the fourth question: 4) Moving forward, will the “citizens-plus” model or the self-recognition model of pursuing Indigenous rights be more effective in protecting Indigenous land rights and promoting well-being in Indigenous communities in Canada? The fifth question regarding the *Peel Watershed* case has thus far has been untreated in peer reviewed literature. My analysis of the case is the central contribution of this thesis research.

Overall, historical interpretations of the Indigenous-Crown relations saw a shift in the 1960s to be more inclusive of Indigenous perspectives and their history. This shift fostered a clearer understanding of the consequences of government actions, rather than solely conveying

¹ Throughout this review, I refer to the department by its title during the time the publication discusses it.

colonial reasoning. In the final section on Indigenous Rights, I relied primarily on Indigenous authors to emphasize Indigenous self-determination.

Indigenous relations with colonizing nations in Canada have fluctuated significantly through wars, alliances, trade, acculturation, assimilation, and treaty agreements. The governmental body responsible for maintaining these relations has mirrored evolution in mainstream public perspectives of Indigenous Peoples, which led to departmental shifts, title alterations and changes in mandates. Limited literature treats the effects of Crown-Indigenous relations within the Yukon, despite the Canadian Government's growing interest in economic development in the north that is strongly expressed in Canada's Arctic Policy and related documents.

Historical Analysis

The treatment of Indigenous Peoples in academic works has significantly evolved over the centuries. Indigenous stories have survived for millennia, passed down orally; only recently have these teachings been viewed as legitimate history by Western scholars. Europeans generally did not recognize that First Nations or Inuit knew their own histories, and they therefore ignored their perspectives. Non-Indigenous individuals have viewed the written accounts of early missionaries, traders, and government officials as the first legitimate historical records of the Indigenous Peoples of North America. These reports portrayed Indigenous Peoples as 'uncivilized' and amoral so as to legitimize Christianisation and colonization efforts. It is important to note that when first interacting with Indigenous societies, the French and English found it difficult to understand the cultural differences and the social structures of communities. The European explorers would try to rationalize these differences through their worldview; to

varying levels scholars eventually acknowledged that Indigenous societies functioned without being organized around the European nation-state system.

The writing of the French Jesuit, Chrestien Leclercq whose book, *New Relation of Gaspesia: With the customs and religion of the Gaspesian Indians*² written in 1641, one of the earliest first-hand perspectives of Indigenous Peoples in Canada, exemplifies these attitudes. Leclercq's European sensitivities pervade the text. "But, after all, they have ever remained savages, since they have not had the sense to profit by their considerable advantages, of which they have rendered themselves wholly unworthy by leaving their studies in order to dwell with their fellow-countrymen in the woods, where they have lived like very bad philosophers, preferring, on the basis of a foolish reasoning, the savage to the French life."³ The book overall reflects curiosity about the unfamiliar culture of the First Nation, but is critical of their actions and displays a strong sense of superiority throughout.

Government accounts of Indigenous Peoples increased during the rise of British power in the colonies. A collection of letters of the first superintendent of the Department of Indian Affairs in Canada, written between 1715 and 1774 and published 1921 in the book *The Papers of Sir William Johnson (1921)*,⁴ exhibits a more respectful view of Indigenous Peoples. In one letter, Johnson describes his exchanges with the Haudenosaunee, with whom he sought an alliance, against first the French and then the Americans. "The best & most Trusty of the Six Nations have by my Solicitations wrought Strongly on ye foreign Nations & I my Self Last Winter by Constant Invitations, & by Belts of Wampum, after their Manner have Secured your

² Chrestien Leclercq, *New Relation of Gaspesia: With the Customs and Religion of the Gaspesian Indians* (Toronto: Champlain Society, 1910).

³ Leclercq, *New Relation of Gaspesia*, 125.

⁴ William Johnson, *The Papers of Sir William Johnson*, ed. James Sullivan (Toronto: University of the State of New York, 1921).

friendship also, & now find them ready at a Call.”⁵ The level of respect shown in British documents waxes and wanes as conflicts between the British Empire and France and the growing United States rise and fall.

Robert Allen’s paper titled *The British Indian Department and the Frontier in North America, 1755-1830* (1975)⁶ provides insight on superintendents’ views towards Indigenous Peoples. Allen focuses on Sir William Johnson's letters and speeches. He describes Johnson's attitude towards Indigenous Peoples as strategic to an extent. He tells of the multiple relationships that Johnson had with Indigenous women and notes that he participated in traditional ceremonies, gaining favour with Indigenous leaders. Having been written in 1973 following the White Paper Accord,⁷ this paper reflects a time when awareness of Indigenous rights and public involvement in policy making was rising. Allen readily acknowledges the pivotal role that Indigenous allies of the British military played in the struggle for control of British North America. Allen’s perspective could have reflected the recent shift in Canadian public opinion that marked the beginning of a return to the mutual respect that Johnson fostered in the early years of British Crown-Indigenous relations. Allen’s work also discusses the events that led to the British Indian Department’s transition from a military branch to Public Works.

As Canada turned its sights towards land acquisition following the War of 1812, the topic of Indigenous Peoples in government documents took on a tone more reflective of wardship, describing them as inferior and only redeemable through the government’s charitable efforts.

⁵ Johnson, *The Papers of Sir William Johnson*, 105.

⁶ Robert S. Allen, “The British Indian Department and the Frontier in North America, 1755-1830,” *Canadian Historic Sites: Occasional Papers in Archaeology and History/Lieux Historiques Canadiens: Cahiers d’archéologies et d’histoire* 14 (1975).

⁷ Formerly known as the Statement of the Government of Canada on Indian Policy, 1969, the White Paper Accord as it came to be known was a Liberal Government of Canada policy paper that sought to assimilate Indigenous Peoples into the Canadian state by ending previous legal documents involving Indigenous Peoples, including the Indian Act and treaties. Naithan Lagace and Niigaanwewidam James Sinclair, “The White Paper, 1969,” *The Canadian Encyclopedia* (Historica Canada, 2015), <https://www.thecanadianencyclopedia.ca/en/article/the-white-paper-1969>.

Following the implementation of the aggressive assimilation policies of the Indian Act in 1876, the annual reports have a strong tone of condescension and express a need to control Indigenous Peoples.

Immediately on my arrival, they came to me, demanding one beef animal, one large chest of tea, 100 lbs. tobacco and 100 lbs. sugar for each Chief. They asked it in a way that I at once saw it was done in bravado, I at once told them that I was surprised at the demand, and also at the way in which it was made, and that, under those circumstances, I would not give them what they wanted; that, had they asked in a proper manner, I should have given them what I thought proper...⁸

The report revolves around the push to “civilize” Indigenous Peoples through the implementation of agricultural initiatives in First Nations and Métis communities as well as through an increase in residential schooling. The tone of these primary documents differs strikingly from the message that rings through in the letters of Sir William Johnson, who viewed the Indigenous Peoples as allies, not a burden.

Brian Titley’s *The Indian Commissioners: Agents of the State and Indian Policy in Canada’s Prairie West, 1873-1932* (2009)⁹ reflects on the lives and careers of four Department of Indian Affairs officials surrounding the early years of the Indian Act. Titley portrays these men with equal parts praise for their accomplishments in expanding Canada’s west and criticism of the racism that influenced their implementation of assimilationist mandates. Written in the post-Truth and Reconciliation Commission (TRC)¹⁰ era in Canada, Titley’s work assesses the actions of these officials, considering the prevalent ethnocentrism of the time and the events that

⁸ “Dominion of Canada Annual Report of the Department of Indian Affairs for the Year Ended 31st December, 1880” (Ottawa, 1881), 146.

⁹ Brian Titley, *The Indian Commissioners: Agents of the State and Indian Policy in Canada’s Prairie West, 1873-1932* (Edmonton: The University of Alberta Press, 2009).

¹⁰ The Truth and Reconciliation Commission was created as a result of the Indian Residential School Settlement Act in 2007. Its intent was to compensate residential school survivors for the trauma they experienced and to also work towards a better future for Indigenous Peoples in Canada. Ry Moran, “Truth and Reconciliation Commission,” *The Canadian Encyclopedia* (Historica Canada, 2015), <https://www.thecanadianencyclopedia.ca/en/article/truth-and-reconciliation-commission>.

influenced the men's personal lives. This book establishes the history of the Department of Indian Affairs leading up to its control under Duncan Campbell Scott, who aimed to have "not a single Indian in Canada who is not absorbed into the body politic,"¹¹ as he himself said.

Canadian perspectives on Campbell Scott have shifted in recent years from viewing him as a prominent literary figure and capable bureaucrat to a perpetrator of cultural genocide,¹² as Indigenous individuals have shared their experiences of the monstrosities of residential schooling. Titley discusses Campbell Scott's legacy in *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs*.¹³ Written in 1986, before the TRC's revelations, this book does not condemn residential school policies as strongly as his later work. It highlights, however, the rise of Indigenous rights activism that fought against the Indian Act's policies.

With the increase in awareness of Indigenous perspectives within Canada, the topic of Indigenous Rights and the role of Indigenous Peoples in Canadian history are gaining prominence. Recent publications emphasize the harm not only to First Nations, Metis and Inuit, but to all of Canada, that paternalistic and racist views reflected in historical policy documents, like the Indian Act, as well as academic works caused. Brian Titley and many others writing on Indigenous Peoples from the 1990s forward reflect this emphasis on harms perpetrated in the past and on correcting the historical record to recognize these injustices.

These more recent scholars begin their treatment of the history of Indigenous Peoples with pre-contact. By doing so, researchers provide comprehensive outlines of Indigenous-Crown relations that reflect the importance of establishing a firm understanding of the Indigenous

¹¹ Robert L. McDougall, "Duncan Campbell Scott," The Canadian Encyclopedia, 2008, <https://www.thecanadianencyclopedia.ca/en/article/duncan-campbell-scott>.

¹² CBC News, "Duncan Campbell Scott Plaque Now Includes His Past Creating Residential Schools," *CBC News*, November 2, 2015, <https://www.cbc.ca/news/canada/ottawa/duncan-campbell-scott-plaque-updated-1.3299062>.

¹³ Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Canada: University of British Columbia Press, 1986).

societies that existed and the complex cultures and policies that sustained them before Europeans came to North America. The comprehensive analyses of J.R. Miller's *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada*, (2009)¹⁴ Sarah Carter's *Aboriginal People and Colonizers of Western Canada to 1900* (2003),¹⁵ and Kerry Abel's *Drum Songs: Glimpses of Dene History* (1993)¹⁶ all begin pre-contact. For instance, they clarify that European traders used established trade networks to facilitate their economic gains. These authors point out that the First Nations and Inuit were accustomed to exchanging goods and eagerly engaged with many non-Indigenous traders. Miller, Carter and Abel show how Indigenous Peoples exerted agency in the changes that occurred to their communities during this era. They examine how conditions and events like disease, fur prices, and war impacted the Indigenous-Crown relationship and how Indigenous agency eroded over time.

Miller's work treats all of Canada and provides a comprehensive telling of critical historical events and their effects on Indigenous-Crown relations as colonists made their way inland, through British North America and later Canada. British and French trader perspectives of Indigenous Peoples from the time of early contact in eastern maritime Mi'kmaq territory differed dramatically from gold miners' perspectives of Indigenous Peoples as they made their way into northwestern Dene territory during the late 1800s. Miller shows these differences clearly, strongly focusing on the increase in perceived need for British colonists and the impacts of this shift in perceptions regarding European settlement of Canada through the Modern Land Claims Era to 2008.

¹⁴ J.R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty Making in Canada* (Toronto: University of Toronto Press, 2009).

¹⁵ Sarah Carter, *Aboriginal People and Colonizers of Western Canada to 1900*, ed. Craig Heron (Toronto: University of Toronto Press, 2003).

¹⁶ Kerry M. Abel, *Drum Songs: Glimpses of Dene History* (McGill-Queen's University Press, 1993).

Carter focuses on the western prairie provinces of Canada. Like Miller, she scaffolds historical events and shifts in perspectives that fueled the increasing assimilationist policy changes in the Department of Indian Affairs. Unlike Miller, she stops her historical analysis in 1900 as she states: "...it was then that any hope of partnership for the twentieth century was laid to rest."¹⁷ Overall, Carter focuses more narrowly than Miller, but she nevertheless provides essential insight into the developments during this critical period of Canadian history when the push for settlement overshadowed Indigenous rights in the west.

Abel's work follows the same comprehensive analysis as Miller's and Carter's and like Carter's, focuses on a specific region of Canada, the Dene nation territory of Northern Alberta and Northwest Territories. Her work treats more deeply, however, specific relationships and stories of individuals, mainly European and First Nations traders. Abel also stands out from other authors with her reliance on oral testimonies to broaden her findings. This increasingly common practice reflects Canadian society's growing interest in Indigenous perspectives of history. Rene Fumoleau's work in *As Long as this Land Shall Last: A History of Treaty 8 and Treaty 11 1870-1939* (2004)¹⁸ resembles Abel's work in that it addresses the Dene nation's history and relies primarily on oral testimonies. The shorter timeframe highlights the differing perspectives of the Indigenous Peoples and the Government of Canada during the negotiation of Treaties 8 and 11. Fumoleau effectively achieves this end by overlaying multiple primary sources, reflecting both Indigenous and non- Indigenous perspectives, of a specific event to compile a more comprehensive analysis of the process.

¹⁷ Carter, *Aboriginal People and Colonizers*, 13.

¹⁸ Rene Fumoleau, *As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870 - 1939* (Calgary: University of Calgary Press, 2004).

Anthropologist Julie Cruikshank also extensively uses oral teachings of Indigenous Peoples in her scholarship. *Reading Voices: Oral and Written Interpretations of the Yukon's Past (1991)*¹⁹ demonstrates how certain stories align with pre-historic natural disasters and later events post-European contact, reflecting how oral testimonies can be as legitimate as written documentation. The book intersperses stories from Elders who interpret these events from their perspectives or worldviews and relate how the events impacted them and their communities. Cruikshank primarily addresses the impacts of Europeans on Yukon First Nations. She points out that written and oral interpretations differ as the “tellers have different goals and objectives.”²⁰ She aims to provide Indigenous perspectives on the history of the area now known as the Yukon Territory, with non-Indigenous individuals contributing to the narrative. She does this successfully and is a renowned, respectful resource of Yukon First Nations history.

Historian Ken Coates also has researched the Indigenous Peoples of both the Northwest Territories and the Yukon. Like Abel, Carter, and Miller, Coates begins his book *Canada's Colonies: A History of the Yukon and Northwest Territories (1985)*²¹ with an outline of Indigenous communities before European contact. The book then traverses through the history of the territories with the Government of Canada taking the dominant role in the text as he briefly explains how policies affected Indigenous Peoples in the region. Another of his works, also written around the mid 1980s, *Best Left as Indians: The Federal Government and the Indians of the Yukon (1984)*,²² focuses more specifically on the Yukon. Written before the implementation of the Umbrella Final Agreement of 1993, the work examines the effects of government policies

¹⁹ Julie Cruikshank, *Reading Voices: Oral and Written Interpretations of the Yukon's Past* (Vancouver/Toronto: Douglas & McIntyre, 1991).

²⁰ Cruikshank, *Reading Voices*, 59.

²¹ Kenneth Coates, *Canada's Colonies: A History of the Yukon and Northwest Territories* (Toronto: James Lorimer & Company LTD., Publishers, 1985).

²² Coates, “Best Left as Indians: The Federal Government and the Indians of the Yukon, 1894 to 1950,” *The Canadian Journal of Native Studies* 2, no. 4 (1984): 179–204, <http://www3.brandonu.ca/cjns/4.2/coates.pdf>.

in the territory prior to treaty-making. This text is an excellent resource for the history of Yukon First Nations-Crown relations prior to more recent significant events like the Umbrella Final Agreement and the *Peel Watershed* case.

The history of Indigenous-Crown relations has been long, complex, and turbulent. Indigenous Peoples have had varying degrees of control over the impacts of non-Indigenous cultures, economic demands, policies, and other influences. A transition occurred between early contact and the era when government documents began to reflect the increased use of paternalistic terminology in Indigenous-Crown relations. In recent decades, scholars are transitioning once again to a more balanced perspective that acknowledges the effects of past wrongs caused by paternalistic, racist attitudes in academia that legitimized harmful government policies. Recent scholarship has also acknowledged the validity of oral testimonies, giving a more comprehensive understanding of history.

Currently, a gap exists in the literature regarding the Department of Indian Affairs' history in the Yukon and its role in Indigenous-Crown relations in the territory. The *Peel Watershed* (2017) case, in particular, has generated limited scholarly work addressing the legal proceedings and their impacts, given the recency of the decision.

Indigenous Rights in Canada

Increasingly, Indigenous authors have contributed to the discourse on Indigenous rights in Canada. The revision of the Indian Act in 1951 revoked the prohibition against Indigenous Peoples forming political organizations, which resulted in many individuals writing about the challenges their communities faced. This surge in access to Indigenous perspectives has fostered greater understanding of how common paternalistic policies have impacted Indigenous Peoples at the local and national levels. Opinions vary among both Indigenous and non-Indigenous

scholars regarding what course Indigenous Peoples should follow to realize the full potential of their rights. This conversation has ensued especially since the release of government documents such as the 1966 *Hawthorn Report*,²³ and expanded dramatically in the context of the Truth and Reconciliation Commission of Canada's *Calls to Action* in 2015,²⁴ and Canada's signing of the *United Nations Declaration on Rights of Indigenous Peoples* in 2016. Increasingly, literature expressing Indigenous perspectives satiates the increased demand for such scholarship.

The Unjust Society by Indigenous activist Harold Cardinal responded to the Liberal Government and the *White Paper, 1969*, in which Minister of Indian Affairs and Northern Development Jean Chrétien and Prime Minister Pierre Trudeau proposed enactment of assimilationist, paternalistic policies toward Indigenous Peoples under the guise of furthering human rights. Cardinal accuses the government of misunderstanding Indigenous concerns and not taking the time or effort to work with communities to find practical solutions: "...the federal government, instead of acknowledging its legal and moral responsibilities to the Indians of Canada and honouring the treaties that the Indian signed in good faith, now proposes to wash its hands of Indians entirely ...".²⁵ Cardinal's work stands out as a direct rebuke of the Liberal Government, which was taken aback by the strong Indigenous rebuttal. This conflict has generated decades of debate with two opposing propositions for rectifying the injustice at the

²³ Lagace and Sinclair, "The White Paper, 1969." The Government of Canada asked anthropologist, Harry Hawthorn in 1963 to conduct a report on the social conditions of Indigenous Peoples in Canada. The report was called A Survey of the Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies, but was referred to as the Hawthorn Report.

²⁴ National Centre for Truth and Reconciliation, "Truth and Reconciliation Commission of Canada: Calls to Action" (Winnipeg, 2012), <https://static1.squarespace.com/static/5ac510114611a0bcce082fac/t/5b92b141f950b758a9a5b2f2/1536340329039/TRC+Calls+to+Action+Pocket+booklet+.pdf>. This document was created by the Truth and Reconciliation Commission whose aim is to "redress the legacy of residential schools and advance the process of Canadian Reconciliation." The document consisted of 94 recommended policy and program changes that can help facilitate Indigenous healing.

²⁵ Harold Cardinal, *The Unjust Society* (Vancouver: Douglas & McIntyre, 1969), 1.

forefront: Indigenous Peoples working within the Canadian Government to establish a rights platform or breaking away from the colonial history of the Government of Canada and finding a pathway outside of the system to assert their rights.

Alan C. Cairns' book, *Citizens Plus: Aboriginal Peoples and the Canadian State* (2000)²⁶ continues the work that he began with his contribution to the Hawthorn Report in 1966. The concept of *Citizens Plus* posits that the Indigenous Peoples within Canada have the same rights that all Canadian citizens have, along with the treaty rights they enjoy. Bill Gallagher's *Resource Rulers: Fortune and Folly on Canada's Road to Resources* (2011)²⁷ gives a comprehensive overview of how Indigenous Peoples have asserted their "plus" rights, the rights to land and resource control.²⁸ Gallagher argues that the courts have helped advance Indigenous rights when Parliament has been unable to do so. He illustrates through case studies how Indigenous Peoples have used the judicial system to stall industrial initiatives when Canada's provincial governments have failed to respect Indigenous rights by neglecting the Crown's duty to consult. Published in 2011, Gallagher's analysis focuses on the debate around the oil and gas development in northern Alberta and the Northwest Territories.

Interestingly, more non-Indigenous than Indigenous writers support the citizen's plus theory and working within a liberalist framework to secure Indigenous rights. Those who look for other methods have been mostly Indigenous, including Taiaike Alfred, whose *Wasase: Indigenous Pathways of Action and Freedom* (2005)²⁹ rejects working with the Government of Canada altogether, as historically this approach has disadvantaged Indigenous Peoples and has

²⁶ Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (UBC Press, 2000).

²⁷ Bill Gallagher, *Resource Rulers: Fortune and Folly on Canada's Road to Resources* (Waterloo: Bill Gallagher, 2011).

²⁸ Cairns writes the preface to Gallagher's work, addressing how this book can be used in conjunction with his citizens plus model.

²⁹ Taiaike Alfred, *Wasase: Indigenous Pathways of Action and Freedom* (Peterborough: Broadview Press, 2005).

resulted in insidious assimilation for many communities. Indigenous scholars Glen Coulthard and Leanne Betasamosake-Simpson support Alfred's argument for a new approach affording Indigenous Peoples greater self-determination. They both refer specifically in their works to their traditional territories; Coulthard is Dene from Northwest Territories and Betasamosake-Simpson is Nishnaabeg from northern Ontario. Neither focuses on the Yukon.

Some non-Indigenous writers agree that working within the Canadian system has caused insidious changes in Indigenous communities. Paul Nadasdy's anthropological work with the Kluane First Nation in the Yukon forms the core of his book *Sovereignty's Entailments: First Nation-State Formation in the Yukon* (2017).³⁰ The case study examines how the implementation of nationhood has caused communities to change sufficiently for the Government of Canada to recognize their self-governance. Nadasdy argues that the current system of Indigenous-Crown relations has had other negative consequences on Indigenous Peoples, some that can be more difficult to discern. For example, he poses the question: "...is the adoption of state-like forms of governance evidence of cultural contamination and inherently destructive of indigenous culture?"³¹ Nadasdy draws on a number of authors, including Alfred, to gain insight into possible answers, but he does not offer a definitive one himself.

Anthropologist Jaskiran Dhillon, like Nadasdy, works closely with a specific community, in her case in Saskatchewan. In *Prairie Rising: Indigenous Youth, Decolonization, and the Politics of Intervention* (2017)³² she critically examines public institutions designed to help Indigenous youth, and the impacts of government policies on the urban Indigenous youth

³⁰ Paul Nadasdy, *Sovereignty's Entailments: First Nation State Formation in the Yukon* (Toronto: University of Toronto Press, 2017).

³¹ Nadasdy, *Sovereignty's Entailments*, 84.

³² Jaskiran Dhillon, *Prairie Rising: Indigenous Youth, Decolonization, and the Politics of Intervention* (Toronto: University of Toronto Press, 2017).

community in Saskatoon. Like Nadasdy, Dhillon relies on testimonies from community members, having long worked to create positive relationships with community members, focusing on Indigenous youth issues. She exposes how the government co-opts Indigenous Peoples into a policy-making process that the government actively controls. This example can be compared with the *Peel Watershed* case wherein the Yukon Government invited Indigenous involvement in the decision-making process only to ignore Indigenous perspectives on development in the region.

Literature Review Synthesis and Conclusion

The language surrounding Indigenous rights in Canada has significantly changed as Indigenous-Crown relations have evolved. Earlier literature shows an ethnocentric superiority in the accounts of traders and missionaries, but still an understanding of the need to respect Indigenous partners. The letters of British officials during times of war were respectful of Indigenous Peoples when they were needed as allies. Times of peace differed as the Department of Indian Affairs exhibited paternalistic ideals as it shifted from a branch of the military to Public Works. Aggressive assimilationist ideals permeated government documents until the 1960s when Indigenous organizations and writers gained a voice and rejected the notion that the Government of Canada knew what was best for them. The onset of the Indigenous rights era within Canada marks a change in tone in the literature.

Many Indigenous scholars have participated in this discourse along with non-Indigenous scholars. Perspectives vary on how Indigenous rights can best be protected and advanced in Canada, whether working with the Government of Canada or creating a new relationship that works outside of the nation-state system. This discourse continues and evolves with every court

case involving Indigenous rights. Little attention has focused, however, on the Crown-Indigenous Relations Department, which remains joined with Northern Development, and on what this pairing means for Indigenous Peoples within Canada.

Some discussion has focused on the devolution of authority within the Yukon Territory that has coincided with resource development, for instance, Jerry McBeath's *Changing Forms of Governance in the North* (2010)³³, but he does not focus on Yukon First Nations. Also, more recent development initiatives like those outlined in Canada's 2009 Arctic Policy³⁴ have drawn little scholarly attention to its execution in the face of growing assertions of Yukon First Nations' rights. In addition, little scholarly work addresses the recent *Peel Watershed* case. This court case stands out as a defining moment in Indigenous land rights protected by the judicial branch in the face of pressure from the Canadian Parliament and the Yukon Government for northern development. Scholars have focused on how best to realize Indigenous rights, but they have generally overlooked the evolution of Yukon First Nations' rights and the defining events in this evolution.

Methods

This thesis examines the evolution of Crown policies over time and the historical events that influenced changes. I am using primarily historical research methods. I have consulted a variety of government documents, other contemporary sources, and secondary works. I developed a timeline starting from just before European contact, marking on it significant events including wars, treaties, and colonial establishments and highlighting when changes occurred in Indigenous-Crown relations through negotiation processes and policies. I have relied on local

³³ Jerry McBeath, "Changing Forms of Governance in the North," in *Globalization of the Circumpolar North* (Fairbanks: University of Alaska Press, 2010), 91–118.

³⁴ Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, "Canada's Northern Strategy: Our North, Our Heritage, Our Future" (Ottawa, 2009).

and national media (newspapers, podcasts, and television) to explore how Canadian public opinion on Indigenous Peoples has changed over time and how this has influenced policymaking. This outline illuminated the history of the department before it arrived in the Yukon. It also allowed me to compare earlier cases when development plans threatened Indigenous land rights and analyze how the outcomes of these cases have evolved to show greater benefits for Indigenous Peoples. I have also considered how Parliamentary and Judicial perspectives evolved in concert with public opinion and how they have responded to greater exposure to Indigenous Peoples' perspectives.

To analyze the Yukon's experience, I made a timeline of the Yukon First Nations' and the Government of the Yukon's history to see how the devolution of power from Ottawa to the territory has affected Indigenous Peoples and how the goals of both groups have changed over time. I also analyzed the Yukon First Nations' document *Together Today for Our Children Tomorrow*, and the settlement it generated, the Umbrella Final Agreement, both of which outline Indigenous concerns and generate Indigenous-led policymaking. Canada's Conservative Government's Arctic Policy sheds light on Parliament and Yukon Government initiatives in the north post-2011.

The foregoing literature informed my analysis of the history of the relationship between Yukon First Nations and the Crown and the assertion of Indigenous rights in the territory, specifically in the *Peel Watershed* case that will influence future development in the Yukon and Canada. I analyze the relationship between shifts in public opinion (reflected in media documents and scholarly work) and public policy that have been guided territorially by the Umbrella Final Agreement and nationally by the Government of Canada's push to develop the Arctic, as is outlined in its Arctic Policy statements.

CHAPTER TWO: HISTORY OF INDIGENOUS-CROWN RELATIONS IN CANADA TO THE MODERN LAND CLAIMS ERA

Indigenous-Crown relations in Canada have been marked by negotiations, ceremony, and acculturation, with fluctuating power differentials. Critical events have shaped how the French, the British, and finally the Canadian Crown have viewed Indigenous Peoples and the resulting policies of these governments. A shift in European-Canadians' perceptions of Indigenous Peoples from much-needed trade and military allies to a burden and obstacle to settlement led to a decline in the use of forest diplomacy and an increase in the use of treaties that required Indigenous Peoples to relinquish rights to their land and assimilate into Canadian society. Expanded awareness of human rights following WWII and growing sensitivity to Indigenous concerns resulted in vociferous demands throughout the nation to revisit Indigenous rights. When the Government of Canada sought to regress to pre-WWII paternalistic policy making with the *White Paper, 1969*, public push-back guided Parliament to develop the comprehensive land claims policy that engaged the Crown in treaty negotiations once again. Indigenous rights were further recognized in Section 35 of The *Constitution Act of 1982* (s.35).¹ Since then, the judicial system has put into action S35 in several court cases, especially relating to land rights. These monumental changes responded to persistent Indigenous activism that continues to fight for the Government of Canada's consistent recognition of Indigenous rights, including self-determination.

¹ Adam Gaudry, "Métis," *The Canadian Encyclopedia* (Historica Canada, 2016), <https://www.thecanadianencyclopedia.ca/en/article/metis>. In the Constitution, Indigenous includes Indian (now more commonly referred to as First Nations), Métis, and Inuit. The Métis are individuals who have mixed Indigenous and European decent, with the Métis Nation being able to trace their heritage back to the Red River Settlement in Manitoba.

Before European colonization of North America, the continent was home to a multitude of diverse Indigenous communities that had extensive societal and government structures with complex trade networks. Their traditional territories were determined differently from what the Europeans had legally determined in the Treaty of Westphalia of 1648,² in that boundaries were not as defined, and some overlap occurred. Their cultures varied greatly throughout the continent, shaped by the environment and available resources. Two such First Nations, the Haudenosaunee of the St Lawrence River Valley and the Nacho Nyäk Dun of the Yukon, illustrated the variability of cultures and lifeways. Owing to their locations, the former society has had some of the most extensive interaction with European colonial society, and the latter has a much shorter history of interaction.



Figure 1: The Neheweyak on this map are represented by the Cree (an Algonquin word) and the Haudenosaunee's traditional territory is located under the Algonquin, in what is now southern Ontario, along the St. Lawrence River. The Nacho Nyäk Dun are Northern Tutchone speakers. This map simplifies the diverse Indigenous communities throughout Canada in the interest of clarity and providing the reader with a general sense of the homelands of Indigenous groups.³

² Edward Watson McWhinney, "Sovereignty," *The Canadian Encyclopedia* (Historica Canada, 2018), <https://www.thecanadianencyclopedia.ca/en/article/sovereignty>. Through this treaty, the nation-state emerged as the dominant institution of international relations, displacing the medieval model in which religious entities were dominant.

³ "Indigenous Communities in Canada's Boreal Forest," Boreal Songbird Initiative, 2015, <https://www.borealbirds.org/indigenous-communities-canada-boreal-forest>.

The traditional territories of the Haudenosaunee (People of the Longhouse) lie along the St. Lawrence River. The fertile farmland in this region allowed the Haudenosaunee to grow crops like corn, beans and squash⁴ and sustain larger populations in a more sedentary lifestyle. The Six Nations that make up the Haudenosaunee Confederacy are united by the Great Law of Peace that dates back to before European contact.⁵ These large societies would rely on clan mothers to choose their chiefs, but the chiefs would also be subject to the will of the people.⁶

The head-person of southern Yukon Indigenous Peoples did not hold the same political authority as Haudenosaunee chiefs. Chosen leaders had great sway in group discourse, but, as Paul Nadasdy explains, they were “never part of an institutionalized civil hierarchy.”⁷ The hunting groups’ composition varied, and people frequently came and left, depending on current relationships and available resources. Rather than farming, the people moved seasonally to secure wild game and fish that migrated through their homeland. Large social gatherings took place two to three times each year, lasting only a week at most, and would usually happen during the summer months at well-known fishing spots.⁸ Languages varied widely within the region, with each family group speaking their own dialect.⁹ The larger communities represented by the

⁴ Anthony Walker, “Growing Native American Heritage: The Three Sisters,” Poughkeepsie Farm Project, 2016, <https://www.farmproject.org/blog/2016/3/31/growing-native-american-heritage-the-three-sisters>. These were called the three sisters and were planted together as they complemented each other in growth and usefulness. The squash would cover the soil with its roots, preventing the sun from drying it out and also help with temperature regulation. The squash’s roots would also prevent weeds from growing and the spiny texture of the leaves and stems would deter animal pests. The corn would act as a stalk for the beans to wrap around. The beans provide nitrogen to the soil, helping the corn and squash grow. Not only do these plants provide protein (beans), carbohydrates (corn) and vitamins (squash), the squash could also be hollowed out and used as storage containers.

⁵ Bruce Elliot Johansen and Barbara Alice Mann, eds., *Encyclopedia of the Haudenosaunee (Iroquois Confederacy)* (Westport: Greenwood Press, 2000), xv. The date that recent scholars have found is 1142, “...three centuries earlier than the general scholarly consensus.” The Great Law of Peace is the oral constitution that was agreed on between five Haudenosaunee nations and remains in practice today.

⁶ Haudenosaunee Confederacy, “Government,” 2019, <https://www.haudenosauneeconfederacy.com/government/>.

⁷ Nadasdy, *Sovereignty’s Entailments: First Nation State Formation in the Yukon*.

⁸ Dominique Legros, “Oral History as History: Tutchone Athapaskan in the Period 1840-1920” (Whitehorse, 2007), 4, 104.

⁹ Fumoleau, *As Long as This Land Shall Last*, 91-92. The official report of the Treaty 8 Commission by David Liard, treaty commissioner, reflects the striking ethnocentrism of the non-Indigenous negotiators when faced with the social structure of the Indigenous: “None of the tribes appear to have any very definite organization, They are held

present fourteen Yukon First Nations reflect a recent development that has been enforced by the Government of Canada.¹⁰

Across what is now Canada, Indigenous Peoples relied on kinship and reciprocity, or as J.R. Miller defines it, *forest diplomacy*, to build relations with others. When asking to fish in a neighbouring territory, for instance, community members would assert their relations to their neighbours. This established kinship would discourage the host group from denying access.¹¹ Owing to variability in abundance of resources, groups created trade networks through establishing kinship and gift-giving. Though trade could have been the reason for initiating kinship and reciprocity with another group, the close relation would not be limited to business transactions but would extend implicitly to all social relations, including marriage or alliances during conflicts. Early European explorers, as well as later colonizers often failed to comprehend such forest diplomacy and cultural differences. The Crown has responded in different ways to this variability among First Nations, depending on its aims at a given time.

French Crown-Indigenous Relations

The French recognized the necessity of cooperation with Indigenous Peoples when they began engaging in the well-developed fur trade networks of North America. Jacques Cartier's first winter in the region proved fatal to some of the explorers, as scurvy broke out and supplies ran low. By listening to the Haudenosaunee, Cartier's men learned to make a mixture from white cedar trees that was high in Vitamin C. Despite this kindness, Cartier took some Indigenous Peoples hostage from the community back to France, including the chief and his two sons. He

together by language bonds. The chiefs and headsmen are simply the most efficient hunters and trappers. They are not lawmakers and leaders in the sense that the chiefs and headsmen of the plains and old Canada are...It may be pointed out that hunting in the North differs from hunting as it was on the plains in that the Indians hunt in a wooded country and instead of moving in bands go individually or in family groups."

¹⁰ Nadasdy, *Sovereignty's Entailments*, 101.

¹¹ Nadasdy, *Sovereignty's Entailments*, 101.

returned to the St. Lawrence River five years later without the people he had kidnapped, and with orders to colonize the region. On arrival, he organized the construction of a fort which he soon left in search of a waterway to the Pacific Ocean. When Cartier returned, he found siege-like conditions at the fort. Marcel Trudel argues that the Haudenosaunee sought to avenge the kidnapping of their chief.¹² In the face of such resistance, Cartier and his men gathered their supplies and retreated to France. Colonization had proved to be impossible without Indigenous cooperation. Future French diplomatic missions sought to foster peaceful relations between the Crown and Indigenous Peoples.

Samuel de Champlain was more adept at diplomacy with North American Indigenous communities. He established a French colony by using Indigenous means of relationship building, kinship, and reciprocity. Ceremonial displays of feasting, wampum,¹³ smoking of the peace pipe, and speeches were repeated regularly to keep maintain peaceful relations.¹⁴ Champlain's use of local Indigenous forms of diplomacy,¹⁵ allowed France to become profitable in the fur trade, and his methods were subsequently adopted throughout the colonized region of New France. For Indigenous Peoples, "ceremonial and diplomatic-military links were merely two aspects of the same kin-like relationship," explains J.R. Miller.¹⁶ The Indigenous communities that sat down with Champlain and succeeding New France officials were engaging in what they perceived as treaty-making. The French preferred the method of Indigenous ceremony to establish peace and engage in trade with Indigenous communities, and only twice in

¹² Marcel Trudel, "Donnacona," *Dictionary of Canadian Biography, Vol. 1* (University of Toronto/Université Laval, 2003), http://www.biographi.ca/en/bio/donnacona_1E.html.

¹³ The wampum has the same function in some Indigenous societies as a book would in settler-society; instead of using words, pictures symbolize historical events that aid in remembering stories.

¹⁴ J.R. Miller, "Canada's Historic Treaties," in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, ed. Terry Fenge and Jim Aldridge (Quebec: McGill-Queens University Press, 2015), 84.

¹⁵ Miller, "Canada's Historic Treaties," 91.

¹⁶ Miller, "Canada's Historic Treaties," 84.

their control of New France did they resort to formal treaty making.¹⁷ The French also left Indigenous societies to function as they had done before and relied on persuasion to build successful colonies in New France.¹⁸ The British took a different approach.

British Crown-Indigenous Relations

The Department of Indian Affairs as a Branch of the Military (1755-1830)

Following the Treaty of Utrecht in 1713, which diminished French influence in Europe and led to Great Britain's rise as a leading commercial power, French control of New France dwindled. Great Britain laid claim to Hudson Bay and its drainage basin, which it named Rupert's Land, a valuable trade region, and the areas presently known as Newfoundland and Nova Scotia.¹⁹

¹⁷ Miller, "Canada's Historic Treaties," 86.

¹⁸ Brian Slattery, "The Royal Proclamation of 1763 and the Aboriginal Constitution," in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, ed. Terry Fenge and Jim Aldridge (Quebec: McGill-Queens University Press, 2015), 1.

¹⁹ Stuart R.J. Sutherland, "Treaty of Utrecht," *The Canadian Encyclopedia* (Historica Canada, 2006), <https://www.thecanadianencyclopedia.ca/en/article/treaty-of-utrecht>.



Figure 2: This map shows the colonies and the lands that were granted to the Hudson Bay Company in 1825.²⁰

Previously known as Acadia by the French, Nova Scotia saw an influx of British settlers who, unlike the French, became increasingly interested in developing farmland, rather than engaging in the fur trade. Miller argues that this emphasis on farming largely explains the lack of British interest in participating in forest diplomacy that had been so successful for the French in their fur trade. Because of the British disregard of Indigenous ceremonial relationship building and their agricultural expansion, the Mi'kmaq readily supported the French Acadians in their struggle to regain control of the region. Aiming to secure Indigenous allegiance, the British began treaty-making with the Mi'kmaq, and entered into at least thirty-two such agreements, in a span of fifty years. British diplomacy thus differed dramatically from that of the French who made just one treaty with the Indigenous community during French control of the region that ended when the British were awarded the territory in the Treaty of Utrecht, 1713.²¹ Unlike the

²⁰ Canadian Geographic, "Historical Maps," 2006, <http://web.nsf.ca/ex591/CG/1825.html>.

²¹ Miller, "Canada's Historic Treaties," 87.

French, the British failed to keep the peace in Nova Scotia, and skirmishes regularly caused the treaty negotiations to start anew. Nevertheless, Miller asserts that the Peace and Friendship Treaties of 1725-1779 “established important foundational commitments,” and “have remained important in Canadian legal history to the present day.”²² These treaties affirm the rights of the Indigenous Peoples of the region to gather and to hunt and fish,²³ demonstrating the ability of the Mi’kmaq and other maritime Indigenous communities to negotiate terms to their advantage. Their focus on these usufruct rights, as opposed to land ownership rights, demonstrates that they did not consider European settlement and treaty making as a loss of land.

Meanwhile, the British viewed the extensive and successful French-Indigenous alliances as a growing threat. With Indigenous support, the French took control of the Ohio Valley, a vital fur trade region.²⁴ In 1755 the Government of Great Britain created the Department of Indian Affairs as a branch of the military to counter French influence.²⁵ Brian Titley argues that the department's purpose was also to “regulate the fur trade and suppress liquor traffic” in the Thirteen Colonies.²⁶ In any case, the department launched itself into an already functioning legal system that originated from a combination of Indigenous and European social norms, forming a sort of cooperative, common law for both parties.²⁷ The jurisdiction under which Crown-Indigenous legal relations functioned demonstrates that the British knew that trying to rely solely on their own customs was futile; they had to engage in ceremonial practices of the Indigenous

²² Miller, “Canada’s Historic Treaties,” 87.

²³ Miller, “Canada’s Historic Treaties,” 88-89.

²⁴ Robert S. Allen, “The British Indian Department and the Frontier in North America, 1755-1830,” *Canadian Historic Sites: Occasional Papers in Archaeology and History/Lieux Historiques Canadiens: Cahiers d’archéologies et d’histoire* 14 (1975), 9.

²⁵ Colette E. Derworiz, “Federal Department of Indigenous and Northern Affairs,” *The Canadian Encyclopedia* (Historica Canada, 2008), <https://www.thecanadianencyclopedia.ca/en/article/aboriginal-affairs-and-northern-development-canada>.

²⁶ Titley, *A Narrow Vision*, 6.

²⁷ Slattery, “The Royal Proclamation of 1763 and the Aboriginal Constitution,” 20.

Peoples to bring First Nations to the table. The use of a legal system reflective of shared cultural values speaks to the fact that the British needed Indigenous cooperation at this time, to encourage trade and colonization, and to foster alliances with First Nations, given the growing tensions between the Crown and British colonists in North America.

When the Seven Years War broke out in North America, the French and British struggled for control of the profitable fur trade region of the Ohio Valley, the Maritimes, and the lands extending from the banks of the St. Lawrence River. Indigenous alliances to both the British and French played pivotal roles in battles throughout the war. With the signing of the Treaty of Paris in 1763, the French surrendered New France, including Quebec, along with Newfoundland and Cape Breton, to Great Britain. These negotiations were done without Indigenous participation or consultation, which unsettled many Indigenous communities, due to increasing European settlement and to some, a loss of their French allies. In retaliation, the Shawnee chief Pontiac rallied neighbouring Indigenous communities in the area to capture all British in-land forts, killing around two thousand civilians in the process.²⁸ Before word of Pontiac's War had reached London, England, the British had almost finalized the Royal Proclamation of 1763. However, the declaration recognized Indigenous Peoples' military strength and asserted that their rights would be protected peacefully, rather than forcefully.²⁹ The British clearly recognized the need to communicate with the Indigenous Peoples, whose support they valued, about their concerns regarding settler encroachment.

The Royal Proclamation of 1763 has played a crucial role in Crown-Indigenous relations in Canada since its inception. Though the Proclamation discusses many facets of the aftermath of

²⁸ J.R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty Making in Canada* (Toronto: University of Toronto Press, 2009), 67.

²⁹ Slattery, "The Royal Proclamation of 1763 and the Aboriginal Constitution," 16.

the Seven Years War, the majority is devoted to the impacts on Indigenous Peoples. This portion of the declaration reflects the cooperative legal practices that the Crown through the Department of Indian Affairs used at this time. The Proclamation declared that Indigenous Peoples would not be “molested or disturbed” on unceded territory and promised Crown protection of these Indigenous communities. It stated that should Indigenous Peoples want to negotiate demarcation of land, it would be done under “Directions and Instructions as We or they shall think proper to give for that Purpose.”³⁰ Through these statements, the Proclamation rejected the idea of *terra nullius*,³¹ outlining in detail procedural rules that the Crown would follow when taking ceded territory from Indigenous Peoples.³² The document assured Indigenous Peoples that they were not conquered peoples and that the British would protect them from settler encroachment.³³ The Royal Proclamation of 1763 provided assurance that the Government of Great Britain and King George III would protect Indigenous land title and continue a cooperative relationship with Indigenous Peoples.

As a former trader, a forest diplomat,³⁴ Sir William Johnson, the northern superintendent of the Department of Indian Affairs, saw the advantage of using this document to foster Indigenous support and organized the Niagara Conference in 1764 to discuss the Proclamation with the Indigenous Peoples of the region. Johnson was well-known for his use of kinship and reciprocity in his dealings with Indigenous Peoples, setting up his home estate as a meeting point for Indigenous leaders. He was an influential figure in the Haudenosaunee communities, engaging in great gift giving, while also having relations with several Indigenous women who

³⁰ George III, “The Royal Proclamation of 7 October 1763,” in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, ed. Terry Fenge and Jim Aldridge (Montreal: McGill-Queen’s University Press, 2015), 206.

³¹ The doctrine that no one owned the land before European claim.

³² Slatery, “The Royal Proclamation of 1763 and the Aboriginal Constitution,” 23.

³³ Slatery, “The Royal Proclamation of 1763 and the Aboriginal Constitution,” 24-25.

³⁴ Miller, *Compact, Contract, Covenant*, 91.

bore his children.³⁵ So when Johnson sent out copies of the declaration, over two thousand Indigenous leaders congregated to hear what he had to say. He opened up the meeting with the use of wampum, an important signal to attendees of Johnson's respect for Indigenous forms of diplomacy. At the Niagara Conference, Johnson not only strengthened British alliances with the First Nations, but he also set a precedent for future treaty negotiations that the Royal Proclamation had outlined: Negotiations could only take place under formal occasions and could not be impromptu. The extent to which the declaration was adhered to diminished over time. However, its influence on Crown-Indigenous relations has been significant, and it fulfilled its initial purpose of maintaining Indigenous allegiance.

The Department of Indian Affairs sought to maintain peace with Indigenous Peoples in the face of the persistent westward expansion by settlers. The 1768 Treaty of Fort Stanwix extended the boundary line farther into Indigenous territory, reflecting the government's catering to growing settler demands. Johnson pledged that Great Britain would defend everything west of the Ohio River from further encroachment. The Indigenous Peoples of the region supported the treaty, after this reassurance from a trusted official and reciprocity shown through generous gift-giving to the Haudenosaunee and Algonquin.³⁶ Unrest soon returned to the area, however, as the Government of Britain was unable to regulate the boundary. "The regulation of trade and land settlement virtually ceased, and the frontier gradually dissolved into anarchy," explains historian Robert S. Allen.³⁷ It became impossible for the British to uphold the Proclamation's promise of formal treaty negotiations in the face of unrelenting pressure from settlers.

³⁵ Allen, "The British Indian Department and the Frontier in North America, 1755-1830," 13.

³⁶ Allen, "The British Indian Department and the Frontier in North America, 1755-1830," 20.

³⁷ Allen, "The British Indian Department and the Frontier in North America, 1755-1830," 21.

With the outbreak of the American Revolution, the department resumed its role of alliance negotiator. Indigenous Peoples' strong distrust of the Americans due to their consistent and often violent encroachment westward into their traditional territory drew most First Nations to become allies of the British, who also proved to be untrustworthy.³⁸ During the Battle of Fallen Timbers in 1774, the British abandoned their Indigenous allies to American forces who slaughtered fleeing Indigenous warriors and burned nearby villages. Following the Treaty of Paris in 1783, First Nations once again saw their traditional territories carved up among the colonial powers without their consultation, even though they had won strategic battles in the regions lost to America. In response to growing tensions, the department once again became a peacekeeper, engaging in gift-giving with surrounding First Nations to keep them as a buffer between the United States and Upper Canada.³⁹ During this time, the Department of Indian Affairs lost favour within the Government of Britain following accusations of official misappropriation of funds for gift-giving. The Government perceived the department's policy of gift-giving as out-dated and expensive, and it was not long before the Government of Great Britain began to question whether the department should be under civil or military control to be of better service, or whether it should cease to exist altogether.⁴⁰

The War of 1812 reinstated the influential status of the Department of Indian Affairs as an essential branch of the military. *Forest diplomacy* was also reinstated with vigour as the Department sent out wampum belts to communities to rally Indigenous allies for the war against the Americans once again.⁴¹ The continued expensive practice of gift-giving during the inter-war

³⁸ Allen, "The British Indian Department and the Frontier in North America, 1755-1830," 24.

³⁹ Allen, "The British Indian Department and the Frontier in North America, 1755-1830," 26 -27.

⁴⁰ Allen, "The British Indian Department and the Frontier in North America, 1755-1830," 61; Titley, *A Narrow Vision*, 7.

⁴¹ Allen, "The British Indian Department and the Frontier in North America, 1755-1830," 73.

years, though not as generous as it was under Sir William Johnson, had proved helpful in keeping Indigenous Peoples supportive of the British. As Sir James Craig, Governor General and Captain General in charge of Quebec's protection, observed, "if we do not employ them, there cannot exist a moment of doubt that they will be employed against us [and] all our valuable commerce now carried out in Indian country would be lost."⁴² Again, fortunately for Upper Canada, the First Nations predominantly sided with the British whom the Indigenous Peoples perceived as "the lesser of two colonial evils."⁴³ As war broke out, Loyalists, including Indigenous allies, fled north into British North America. Since 1783, the Government of Great Britain had been engaging in treaty negotiations in southern Ontario with the primary objective of obtaining "lawful access to lands on which to settle recent allies of the war against the American rebels," according to Miller.⁴⁴ The "lawful" stipulation stemmed back to the Royal Proclamation of 1763 that declared treaties as a necessity to land acquisition. Miller adds that a British "guilty conscious" played a role in the initiation of the negotiations, as well as recognition of how prudent negotiations were in the face of growing Indigenous discontent.⁴⁵

During this time, the more southerly Indigenous Peoples experienced different British interactions than the more northwesterly Nehiyawak and Dene. When he chartered the Hudson Bay Company (HBC) in 1670, King Charles II gave the trading company explicit instructions to foster peaceful relations with the Indigenous Peoples to encourage trade. HBC officials became the first representatives of the Crown to engage with northern Indigenous Peoples. Not only did the traders employ forest diplomacy to facilitate peaceful relations based on kinship and

⁴² Chaim M. Rosenberg, *Losing America, Conquering India: Lord Cornwallis and the Remaking of the British Empire* (Jefferson: McFarland & Company, Inc., 2017), 181.

⁴³ "War of 1812," *The Canadian Encyclopedia* (Historica Canada, 2017), <https://www.thecanadianencyclopedia.ca/en/article/war-of-1812-editorial>.

⁴⁴ Miller, *Compact, Contract, Covenant*, 79.

⁴⁵ Miller, *Compact, Contract, Covenant*, 78.

reciprocity, but they also sought to broker peace agreements between Indigenous Peoples. Kerry Abel points out in her book *Drum Songs: Glimpses of Dene History* that encouraging peace between warring Indigenous communities would bring an end to the pattern of the dominant Cree/Nehiyawak Peoples blocking Dene groups from coming to HBC forts to trade themselves. Gaining Chipewyan (a Dene group) interest in trade widened the HBC's scope of trade networks and facilitated growth in the company. Abel retells the story of James Knight, an HBC official who worked diligently to establish a trading post inland for the Chipewyan. He was prevented, however, by the Nehiyawak, who would not give up their monopoly as the intermediaries between the HBC and other Indigenous communities in the trade of European goods, including firearms. In response, the Chipewyan said that they would not willingly expose themselves by travelling to meet the HBC at a designated spot. Knight eventually brokered peaceful relations enough to garner Chipewyan trade with an inland post. With significant help from his Chipewyan partner, Thanadelthur, Knight organized feasts, gift-exchanges, and the adoption of youths from each community into the other to demonstrate kinship and reciprocity. As European goods made their way inland along extensive Indigenous trade networks, interest in what the company had to offer grew. The HBC continued to encourage its employees to utilize diplomacy to increase their success.⁴⁶

The HBC's profitability drew other companies into the region. By the mid-1780s the Northwest Company (NWC) based out of Montreal had begun to encroach on the HBC's trade monopoly. Many of these new traders were Métis who had married into the Indigenous communities within which they traded. Though there are numerous stories of NWC traders trafficking Indigenous women and of their reliance on rum for trade,⁴⁷ Indigenous communities

⁴⁶ Kerry M. Abel, *Drum Songs: Glimpses of Dene History* (McGill-Queen's University Press, 1993), 48-51.

⁴⁷ Abel, *Drum Songs*, 76-78.

benefited from this competition trade-wise. Indigenous groups played the companies off one another, for instance by claiming mistreatment by the opposing company to garner sympathy, or by threats to favour one company over the other. Under both circumstances, HBC traders played into the Indigenous Peoples' plans, giving free goods to Indigenous traders, according to oral histories.⁴⁸ With the fur trade still thriving in the northwest of Rupert's Land and beyond, European trade companies relied heavily on forest diplomacy to garner Indigenous support needed for the business to thrive. As the HBC turned its sights to other business ventures in the mid-1800s, these relationships of kinship and reciprocity declined, as they had in the south, half a century earlier.

Indigenous-Crown relations had been deteriorating for some time now in the southeastern British colonies of Upper and Lower Canada, New Brunswick, Newfoundland, and Nova Scotia. Indigenous Peoples resented the encroachment on their lands by settlers and the trade of their lands through peace treaties to which they were not privy.⁴⁹ There had not been a Royal Proclamation following the American Revolution to quell Indigenous discontent like that of 1763 following the Seven Years War. These actions betrayed the promises that their traditional territories would maintain the protection of the British Crown. Discontent had already been growing owing to Britain's refusal to fully back Indigenous uprisings on numerous occasions after the American Revolution, yet Indigenous peoples had given the British their support during both of the American-British conflicts. Also, word of the British abandonment of their Indigenous allies during the Battle of Fallen Timbers had spread. Moreover, mistreatment increased, and mistrust grew between Indigenous Peoples and the Crown. The Mississauga Peoples harbored many complaints about how the Upper Canada Treaties were conducted. Given

⁴⁸ Abel, *Drum Songs*, 82-83.

⁴⁹ Treaty of Ghent of 1814, Treaty of Paris and Treaty of Versailles in 1873, Jay Treaty in 1795.

the continuing need for Indigenous alliances and the wave of Loyalist immigrants who needed land immediately, the Crown pledged to avoid miscommunication in negotiations in the future, to reduce discontent among First Nations. The government promised it would do this by providing adept Indigenous language interpreters and a copy of the treaty to the Indigenous Peoples.⁵⁰ With the recent memory of Pontiac's War, the British understood well the damage that Indigenous revolts could cause. While the British did fear Indigenous Peoples would defeat them in battle at this time, they wanted to avoid costly interruptions in their colonization. This became increasingly difficult, however, as settlers pushed onward into Indigenous territories. J.R. Miller points out that the early Upper Canada Treaties were relatively cooperative, with Indigenous Peoples even offering to share the land.⁵¹ Such aspirations for cooperation at this time may have owed to settlers' interest in looking to Indigenous Peoples for "advice, food and sometimes labour in making farms," Miller explains.⁵² As settlers began to outnumber Indigenous Peoples and change the landscape of British North America, British perspectives on Indigenous Peoples shifted significantly, and the role of the Department of Indian Affairs evolved to reflect this change.

The Department of Indian Affairs under Civil Jurisdiction (1830-1867)

Following the War of 1812, the British Government began to transfer governmental control to its remaining colonies in North America. The Department of Indian Affairs also shifted, a process that was finalized in 1860. In the years leading up to colonial control, the Canadian colonies attempted to formulate their Indian policy based on the legacy of Britain's Crown-Indigenous relations, which was no easy task, as the British "never adopted a consistent

⁵⁰ Miller, *Compact, Contract, Covenant*, 85.

⁵¹ Miller, *Compact, Contract, Covenant*, 79.

⁵² Miller, *Compact, Contract, Covenant*, 91.

set of principles” and the “policy varied from region to region,” as Brian Titley points out.⁵³ The variance in policies was time consuming for officials when engaging in diplomatic missions with Indigenous Peoples, which was only exacerbated by the department’s overall disorganization and inconsistent leadership that reflected the department’s “relative unimportance,” in Parliament Titley argues.⁵⁴ Meanwhile, Indigenous populations suffered from displacement and social upheaval from war, disease, and the loss of the fur trade. As the threat of war receded and settlers’ reliance on Indigenous knowledge dwindled, British North America began to view Indigenous Peoples as a hindrance to colonization and land acquisition. This change in perspective led to the department’s transfer from a branch of the military to civilian control in 1869. The “Johnson school of forest diplomacy” faded and was replaced by settler-society initiatives that saw land surveyors hired as department officials.⁵⁶ Meanwhile, government attempted to assimilate Indigenous Peoples into mainstream settler society as a means of saving them from their “uncivilized” cultures.⁵⁷

The Department of Indian Affairs established schools to educate Indigenous children in agriculture and English/French culture and language to ensure their “success in the modern economy.” With the cooperation of Christian churches, the department began with day schools, eventually introducing residential schooling in 1833, which took children from their Indigenous communities and tried to assimilate them through alienation from their families and cultures. Department officials pursued these civilization programs with fervour, and they spread throughout the colonies, continuing well after the creation of the Dominion of Canada in 1867.

⁵³ Titley, *A Narrow Vision*, 1.

⁵⁴ Titley, *A Narrow Vision*, 2.

⁵⁵ Titley, *The Indian Commissioners*, 4.

⁵⁶ Miller, “Canada’s Historic Treaties,” 91.

⁵⁷ Titley, *The Indian Commissioners*, 207.

As Sarah Carter points out, "to introduce private property, to dispossess Aboriginal peoples of their land, to dominate and colonize, it was important to show, not only the shortcomings of the present owners but the great superiority of the people who wished to accomplish these tasks."⁵⁸ The new "civilization policy" initiated the paternalistic policy-making that was to dominate the department in the coming years.

As treaty negotiations continued in Upper Canada, they set a framework for future treaties to follow. Britain had given the responsibility of treaty fulfillment to the colonists, and sale of ceded Indigenous territories to settlers provided the funds to do so. The introduction of annuities relieved the colonies of the obligation to make large initial payouts. Forest diplomacy in negotiations steadily declined, especially after the War of 1812, and the colonial government increasingly disregarded the requirements set out in the Royal Proclamation, specifically in initiating negotiations.⁵⁹ The tide of European immigrants resulted in hastily made treaties, as the desire for immediate land acquisition ruled out effective communication and forest diplomacy with the First Nations. The British desire for final sales gave Indigenous communities little room to negotiate hunting and fishing rights and other protections. Government officials disregarded Indigenous concerns as the Department of Indian Affairs took control of the future of Indigenous Peoples and their lands. The department's replacement of the term *treaties* with *indentures* reflected the British change in perspective.⁶⁰ In fact, one relatively recent map by Indian and Northern Affairs Canada labels the Upper Canada Treaties as the Upper Canada Land

⁵⁸ Carter, *Aboriginal People and Colonizers*, 82.

⁵⁹ Miller, "Canada's Historic Treaties," 91-92.

⁶⁰ Miller, *Compact, Contract, Covenant*, 95.

Surrenders, disregarding the hunting and fishing rights and other provisions made in the treaties.⁶¹



Figure 3: This map is from the Department of Indian Affairs. Notice the purple, southern Ontario treaties are referred to as “land surrenders” and not treaties.

The map above of historical treaties of Canada includes the Williams Treaty and the Robinson Treaties that were signed in 1850, acquiring land north of Lake Superior and Lake Huron for the impending Government of Canada. These two treaties covered extensive areas and introduced reserves, which were small parcels of land that were reserved for Indigenous use that Indigenous Peoples were regulated to. Along with the Upper Canada Treaties, these treaties stand out, as Miller notes, because the “background to their negotiations revealed that the more a settler society developed and controlled Indian affairs, the less it seemed to remember traditional Crown obligations to First Nations.”⁶² Unsurprisingly, Indigenous-Crown relations deteriorated as First

⁶¹ The University of British Columbia, “Aboriginal Treaties,” 2019, <http://guides.library.ubc.ca/c.php?g=699374&p=4965964>.

⁶² Miller, *Compact, Contract, Covenant*, 117.

Nations saw their lands and resources “molested or disturbed” by invading settlers, despite the Crown’s assurances within the Proclamation of 1763.⁶³ The outlook for Indigenous Peoples deteriorated further with the Confederation of Canada in 1867, as the new government inherited British perspectives on responsibilities toward Indigenous Peoples. Soon paternalistic, civilization policies spread northwest.

Canadian Crown-Indigenous Affairs

Northwestward Expansion (1870-1920s)

The HBC’s perspectives of Indigenous Peoples had changed dramatically between its inception in 1670 and the sale of Rupert’s Land and the Northwest Territories to the Government of Canada for £300 000 in 1870.⁶⁴ The Indigenous communities of the northwestern plains and woodlands of Canada had been invaluable partners in the profitable fur trade. As fur prices dropped, the HBC looked to land development for profit.⁶⁵ Just how dependent Indigenous communities were on the fur trade and how great an effect the drop in fur prices had on them remains a debated topic.⁶⁶ Yet communities clearly had been greatly affected by the loss of subsistence resources, especially bison, and the multiple epidemics that had decimated generations, including Elders who could no longer pass down their knowledge.⁶⁷ The sale of their traditional territories to Canada further threatened Indigenous livelihoods and well-being.

The Métis of the Red River Settlement in what is now southeastern Manitoba first experienced the effects of the giant land purchase. Without warning, land surveyors arrived in

⁶³ George III, “The Royal Proclamation of 7 October 1763,” 204.

⁶⁴ Titley, *The Indian Commissioners*, 9.

⁶⁵ Miller, *Compact, Contract, Covenant*, 133.

⁶⁶ Carter, *Aboriginal People and Colonizers*, 54. In *The Ojibway of Western Canada, 1780-1870*, Laura Peers states “True dependence came with the reserve era when the loss of land and resources, personal freedom, political autonomy, and cultural self-determination compounded the changes that participation in the fur trade wrought in Native societies.” Laura Peers, *The Ojibway of Western Canada, 1780-1870* (Winnipeg: University of Manitoba Press, 1994).

⁶⁷ Carter, *Aboriginal People and Colonizers*, 52.

the west. The Government of Canada's actions violated the Royal Proclamation that stated the Crown would not “grant Warrants or Survey... Lands, whatever, which, not having been ceded.”⁶⁸ Led by Louis Riel,⁶⁹ the Métis rebelled by organizing a provincial government and expelling the land surveyors, forcing the Government of Canada to recognize Métis concerns. As a result, the province of Manitoba was created with a constitution upholding many of the Métis’ cultural demands, including the maintenance of the French language and the Roman Catholic faith in schools, and government and land allotments. The Manitoba Act was signed in 1870. The rebellion, however, dragged on and ultimately, Louis Riel was arrested and hanged for treason in 1885. The Métis soon undertook a mass exodus from Manitoba due to unfulfilled promised Crown land allotments that the government instead gave to incoming settlers.⁷⁰ The Government of Canada’s military occupation of the province after the rebellion had mostly ended,⁷¹ having served as a statement of the Crown's military power that could be used against any further insurgency in the newly acquired territory.

Following the Red River Resistance, the Department of Indian Affairs set out to negotiate cession of settlement and railway corridor lands in the west, the latter a constitutional obligation outlined in the British North America Act. The risk of ‘unclaimed’ Indigenous lands being absorbed into America’s vision of Manifest Destiny also concerned the Canadian government.⁷² The department functioned under civilization policies inherited from Britain, justifying its actions as furthering a moral obligation of the Crown to assimilate the “inferior” Indigenous

⁶⁸ George III, “The Royal Proclamation of 7 October 1763,” 205.

⁶⁹ George Stanley, “Louis Riel,” *The Canadian Encyclopedia* (Historica Canada, 2018), <https://www.thecanadianencyclopedia.ca/en/article/louis-riel>. Louis Riel was a Metis man who had studied for the priesthood in Montreal, Quebec. When he returned to his home in Red River, he became a prominent figure as an articulate individual with an eastern education, in the fight against the Anglo-Canadian government officials who sought to transform the settlement to conform to English standards.

⁷⁰ Carter, *Aboriginal People and Colonizers*, 109.

⁷¹ Carter, *Aboriginal People and Colonizers*, 107.

⁷² Miller, *Compact, Contract, Covenant*, 149.

Peoples into the “superior” colonial lifestyle. The Government of Canada sought to do this in a humane manner and to avoid costly and cumbersome rebellions. Initially during the Numbered Treaties Era from 1871 to 1929, the Crown harkened back to the Royal Proclamation’s promises, engaging in formal treaty negotiations instead of surveying lands without warning.⁷³ Treaties One through Seven, signed between 1871 and 1877, lay close to the American border. Meanwhile, Indigenous Peoples had their own reasons for engaging in treaty negotiations with the Crown. These varied depending on location, but motives included the strain from famine, disease, and inter-community conflict. The American threat also played a role with the influx of whiskey traders and the risk of conflict between Indigenous Peoples and the United States military south of the border, throughout Blackfoot territory.⁷⁴

Indigenous leaders initiated negotiations on Treaty One and Treaty Two, owing to anxiety that future economic development could exclude them. According to government officials, they made excessive demands for agricultural resources that the colonial negotiators had not been prepared to offer.⁷⁵ To encourage Indigenous leaders to sign, department officials made oral promises of “implements, cattle, wagons, and housing” that officials omitted from the written treaties.⁷⁶ Many communities claimed treaty promises were unfulfilled following the final signing, as oral promises were forgotten, a common complaint with the Numbered Treaties overall.

Indigenous leaders exerted more influence in negotiating Treaty Three, owing to the strategic position of their traditional territories in the proposed path of the railway and westward settlement. In addition to the typical initial payments and annuities, they obtained assurances of

⁷³ Carter, *Aboriginal People and Colonizers*, 119.

⁷⁴ Miller, *Compact, Contract, Covenant*, 149.

⁷⁵ Miller, *Compact, Contract, Covenant*, 163.

⁷⁶ Carter, *Aboriginal People and Colonizers*, 122.

agricultural assistance in the written treaty,⁷⁷ and they negotiated designated reserve lands – a provision promised in Treaty One and Two that had not come to fruition. Moreover, a minor resurgence of forest diplomacy could be seen in the use of the peace pipe by government officials, gift-giving, and speeches that included declarations of kinship.⁷⁸ Simon Dawson, an engineer, sent to survey parts of northern Ontario, warned Parliament of the need to stay on good terms with the Ojibwa of the region. Ottawa responded by sending gifts to chiefs.⁷⁹

Treaty Four was conducted in a similar manner to Treaty Three. Conditions changed with Treaty Five as the more remote, northern Indigenous communities were offered less reserve land and smaller annuities. The post-treaty negotiations saw a deviation in Indigenous-Crown relations for Indigenous communities covered by Treaties Four and Five. First Nations who were not present during the negotiations were included afterwards on a “take-it-or-leave-it” basis.⁸⁰ The Numbered Treaties after Treaty Three differed from previous treaties in covering much larger areas. Due to the lack of infrastructure and the high costs of travel, the Government of Canada consistently neglected to engage all Indigenous communities that lay in the area.

Treaty Six negotiations continued colonial expansion into western Canada. Unlike previous treaties, the First Nations parties to Treaty Six persistently demanded and eventually received the written promise of government assistance in the case of famine and disease, including the provision of a medicine chest available for their use at Indian agent’s posts.⁸¹ Along with agriculture assistance, this stipulation would be of great value to Treaty Six Indigenous signatories who had been negatively affected by the depletion of the bison. The

⁷⁷ Carter, *Aboriginal People and Colonizers*, 123.

⁷⁸ Miller, *Compact, Contract, Covenant*, 169.

⁷⁹ Miller, *Compact, Contract, Covenant*, 146.

⁸⁰ Miller, *Compact, Contract, Covenant*, 174-175.

⁸¹ Carter, *Aboriginal People and Colonizers*, 123.

Department of Indian Affairs pursued Treaty Seven negotiations less respectfully, however, refusing to make any significant changes to Ottawa's provisions. The Blackfoot who were consulted in Treaty Seven secured annuities, initial payments and reserve lands, but no medical assistance. The Blackfoot agreed to these terms largely owing to the promise of government protection against the growing threat of American invaders.⁸²

After Treaty Seven was signed in 1877, a pause took place in treaty negotiations in the west. A year before, the Department of Indian Affairs had consolidated its Indigenous policies into the Indian Act of 1876. Now, instead of regionally based policies, a national Indigenous policy presumed all Indigenous Peoples to be of the same mind. The Gradual Civilization Act of 1857⁸³ and the Enfranchisement Act of 1869⁸⁴ were merged into the new act, as they both fell in line with the idea that Indigenous Peoples would survive only through assimilation into settler society. In 1873, the Department of Indian Affairs had been placed under the Department of the Interior's jurisdiction. The aggressive assimilation policies of the Indian Act facilitated the Department of the Interior's mandate to develop the west by freeing up settlement lands. The Act would also ease the eventual phasing out the Department of Indian Affairs itself.

By the 1870s, the Department of Indian Affairs differed significantly from the original created in 1755. The Indigenous Peoples of the west now experienced Crown policies that had evolved out of a post-alliance period. Negotiators did not inform Indigenous Peoples of Indian

⁸² Miller, *Compact, Contract, Covenant*, 183.

⁸³ Carter, *Aboriginal People and Colonizers*, 116. The Gradual Civilization Act "stipulated that any Indian, if he was male, free of debt, literate, and of good moral character, could be awarded full ownership of 50 acres of reserve land, and would thereby...cut his tribal ties and cease to be Indian." Titley, *The Indian Commissioners*. 6. This process was called enfranchisement and meant that Indigenous Peoples would then be able to vote, go to university, and enjoy other full citizenship rights.

⁸⁴ Titley, *The Indian Commissioners*, 8. The Enfranchisement Act reaffirmed the 1856 Act, adding "clarification to Indian Status" and "encouraged Native bands to replace their traditional forms of governance with a system of elected chiefs and councils" that was "subject to confirmation by the Governor in Council" and could be removed if the Crown saw fit.

Act policies during the negotiation of the Numbered Treaties, as doing so could have hampered negotiations.⁸⁵ In 1896, the Liberal Government of Canada appointed businessmen such as Clifford Sifton and Frank Oliver to head the Department of the Interior. These men's visions and negotiating styles differed strikingly from those of Sir William Johnson, the forest diplomat, as they both actively sought to eradicate Indigenous land rights throughout their careers.⁸⁶ The paternalistic, aggressive assimilation policies of the Indian Act came into full force in the regions covered by the Southern Numbered Treaties. The Government of Canada actively promoted settlement in the region while ignoring First Nations' protests against unfulfilled treaty promises. All pretence of diplomacy evaporated, and conditions in many communities worsened. Many northern communities became wary of engaging in treaty making with the Crown.⁸⁷ However, the hardships they experienced, including disease and famine, pushed them to the negotiating table.

The Numbered Treaty negotiations resumed in 1899, now more spread out, both spatially and temporally. The Crown initiated these more remote, northerly treaties to secure access to resources. The Indigenous Peoples of what is now Treaty Eight territory in northern British Columbia, Alberta, and Saskatchewan, and the southern Northwest Territories, were experiencing the decline of fur prices and saw treaty annuities as a means of supplementing their incomes. During the Klondike Gold Rush, prospectors who traveled the all-Canada route north from Edmonton, Alberta, flooded the region on their way to the Yukon, indifferent to Indigenous livestock and other property. As conflicts became more frequent, the Northwest Mounted Police petitioned the Government of Canada to engage in treaty negotiations. The government ignored

⁸⁵ Miller, *Compact, Contract, Covenant*, 182.

⁸⁶ Titley, *The Indian Commissioners*, 208.

⁸⁷ Miller, *Compact, Contract, Covenant*, 187, 192.

their mistakes with the southern treaties and began the treaty negotiations in haste, leaving out many communities in the process, and asking them to sign after the agreement had been finalized, with little formality. Indigenous leaders negotiated effectively to secure the Crown's promise of the protection of their hunting and fishing rights, in writing.⁸⁸ The parties signed Treaty Eight in 1899, freeing land for the formation of the province of Alberta, and half of the area that would become the province of Saskatchewan in 1905. Treaty Ten was signed with the Dene in 1906, under similar circumstances, ceding the remaining land in Saskatchewan for provincial development.⁸⁹

Much like the circumstances surrounding Treaty Eight, Treaty Nine, signed in 1899 and 1929, freed up northern lands in Ontario, after the discovery of precious metals lured a wave of settlers who began to claim unceded territory. Suffering from falling fur prices, Indigenous leaders looked to the Government of Canada for help. According to Miller, Ottawa moved quickly to negotiate terms with First Nations, owing to concern that increased settler-Indigenous interactions would influence First Nations to make more demands.⁹⁰ First Nations remembered these talks as amicable, and when negotiators pledged protection of their hunting and fishing rights and annuities, First Nations agreed to sign. The written version, however, does not provide the strict guarantees of these rights promised, a recurrence of earlier broken commitments. As the treaty procession made its way through communities, First Nations responded with gun salutes and grand feasts. The commissioners engaged in a limited display of forest diplomacy by giving a twelve-foot Union Jack flag as a gift to the communities that signed the treaty in 1905 and 1906. Addendums to this treaty covered the rest of the province in 1929.⁹¹

⁸⁸ Fumoleau, *As Long as This Land Shall Last*, 60; Miller, *Compact, Contract, Covenant*, 202-204.

⁸⁹ Miller, *Compact, Contract, Covenant*, 215.

⁹⁰ Miller, *Compact, Contract, Covenant*, 209.

⁹¹ Miller, *Compact, Contract, Covenant*, 210-211.

In 1921, the final Numbered Treaty, Eleven, was signed. The Indigenous parties, and church and government officials had petitioned Ottawa for years to make a treaty, as they had, like other northern Indigenous Peoples, fallen on difficult times due to declining fur prices, loss of resources, diseases, and settler competition. The Inspector Henry Conroy who had been appointed to monitor Treaty Eight territory, wrote many letters to the Government of Canada, communicating the northern Indigenous chiefs' request to negotiate a treaty. Both Anglican and Catholic Bishops petitioned the government for treaty making in the Northwest Territories.⁹² Initially, Ottawa ignored these pleas. Fumoleau argues that government resistance owed to the expense of treaty making, minimal settler pressure in the region, and the expectation that the Indigenous Peoples would die out, due to waves of epidemics and food shortages.⁹³ Other factors could have included the distraction of WWI from 1914 to 1918. Even with the vociferous outcry from both the church and law enforcement in Northwest Territories, and the request from Indigenous Peoples themselves, the Department of Indian Affairs' 1903 year-end report presented to Parliament did not address these concerns. The report proclaimed, "habits of providence as well as the spirit of enterprise and self-reliance are steadily extending."⁹⁴ Whatever the reasoning for the Government of Canada's hesitation in treaty negotiations north of Treaty Eight, the discovery of oil in Norman Wells, Northwest Territories on August 25, 1920 convinced Ottawa to send a negotiating party. Unlike previous treaty negotiations, the government presented Treaty Eleven to the First Nations as non-negotiable. Like the Williams

⁹² Fumoleau, *As Long as This Land Shall Last*, 164-168.

⁹³ Fumoleau, *As Long as This Land Shall Last*, 161.

⁹⁴ Department of Indian Affairs, "Dominion of Canada Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1903" (Ottawa, 1904), <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=16066>.

Treaties of 1923 in Ontario, the treaty was written in Ottawa and presented in “take-it-or-leave-it form.”⁹⁵

Treaty Commissioner H. A. Conroy assured the Indigenous Peoples of the protection of their hunting and fishing rights. His untimely death soon after the signing of the treaty, however, left orally negotiated promises all but forgotten by government officials back in Ottawa. For the First Nations, the concept of land surrenders was incomprehensible. Therefore, as an Indigenous woman, Noel Sotchia, explains: “Land was never mentioned and we did not take the treaty money to give our land to the Crown. If such was the case we would not have accepted the treaty money.”⁹⁶ Historian Sarah Carter explains that First Nations intended not to give up their lands, but to “share and coexist” with non-Indigenous and to ensure they would be able to hunt and fish after this transition.⁹⁷

Rene Fumoleau’s *As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939*, provides a detailed account of the treaty talks from all perspectives by taking Indigenous and non-Indigenous primary sources of the negotiations, and overlaying them. While Indigenous Peoples do not have written records of the events, oral accounts are clear, a skill of which Ottawa was well aware during the Numbered Treaties era. Government surveyor S.J. Dawson had told Parliament prior to Treaty One “that though [Indigenous Peoples] have no means of writing, there are always those present who are charged to keep every word in mind.” He had witnessed this first hand in northern Ontario, when a chief relayed, almost verbatim what Dawson had said to him two years prior.⁹⁸ Unsurprisingly, when Fumoleau approached elderly Indigenous individuals who attended or participated in treaty negotiations or had heard stories

⁹⁵ Miller, *Compact, Contract, Covenant*, 225.

⁹⁶ Fumoleau, *As Long as This Land Shall Last*, 248.

⁹⁷ Carter, *Aboriginal People and Colonizers*, 123.

⁹⁸ Carter, *Aboriginal People and Colonizers*, 122.

from relatives, they were able to describe the transactions in detail, going far beyond what was written. His findings show a clear difference between what First Nations understood they agreed to and what colonial powers conveyed. A fundamental difference in European and Indigenous Peoples' understanding of land rights lay at the heart of the miscommunication. As Fumoleau explains, "To Indigenous, title of land meant the right to use the land and its riches, to range freely through the country. Whereas European title meant private ownership."⁹⁹ In negotiating both Treaties Eight and Eleven, the Indigenous parties stressed protection of hunting and fishing rights. But, as Fumoleau notes, the northern treaties were written before the commissioners left Ottawa, bringing with them documents that First Nations were only allowed to modify minimally.¹⁰⁰ The Government of Canada's increasing domination and control of Indigenous-Crown relations during the Numbered Treaties Era is quite striking.

The Numbered Treaties affected lands outside the Yukon and British Columbia for the most part. British Columbia stood by the notion of *terra nullius as kindness*, as Stuart Banner puts it. In 1851, the British Government gave James Douglas control of the colony as its first governor. Douglas is said to have had compassion for the First Nations when he entered into two treaties, The Douglas Treaties, in 1850 and 1854 on the south of Vancouver Island. These were the only treaties he engaged in; soon afterwards Douglas concluded that treaties harmed the Indigenous Peoples. He wanted to avoid the bleak conditions of poverty and famine Indigenous Peoples were experiencing on reservations in the United States and reserves in Canada. To avoid creating reserves through treaty negotiations in British Columbia, he invoked *terra nullius* in the province. Even after British Columbia joined Canada and the Crown urged the province to revoke the *terra nullius* policy, the provincial government refused and maintained that First

⁹⁹ Fumoleau, *As Long as This Land Shall Last*, xxiii.

¹⁰⁰ Fumoleau, *As Long as This Land Shall Last*, 73.

Nations had no right to the land.¹⁰¹ As for the Yukon, the region had intentionally been kept out of treaty negotiations also. As the Minister of the Interior in 1898, Clifford Sifton stated, “So far as the government is aware, there is no Indian title to be extinguished in Yukon.”¹⁰² The rationale for this position will be explored further in a later chapter.

As the foregoing history has illustrated, treaty making for Indigenous Peoples across Canada varied greatly under different Crowns. The French recognized the advantage in *forest diplomacy*, rarely relying on formal treaty making to build relationships. As wars were fought and treaties signed, the Indigenous Peoples of North America found their lands increasingly encroached upon by settlers. When colonial powers agreed on borders, Indigenous Peoples were mere spectators in the developments, without being consulted or having explained the consequences on them of such decisions. The British Crown nevertheless recognized the value of alliances with Indigenous Peoples. The creation of the Department of Indian Affairs, that discouraged French relations with Indigenous communities, and the Royal Proclamation of 1763, that provided protections for Indigenous Peoples from settler encroachment, both reflect British recognition that Indigenous allies were better than enemies.

Once the wars between colonial powers in North America ended, and settlement expanded, land acquisition became the dominant focus of the British Crown, putting Indigenous Peoples in a precarious situation. From 1830 on, the Department of Indian Affairs focused on civil matters, and increasingly emphasized civilization policies. The Government of Canada concluded treaties with haste and little formality to acquire land for waves of European immigrants. With its purchase of Rupert’s Land and the Northwestern Territories from the HBC

¹⁰¹ Stuart Banner, “British Columbia: Terra Nullius as Kindness,” in *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (London: Harvard University Press, 2007), 195 -230.

¹⁰² Abel, *Drum Songs*, 168.

in 1870, the newly formed Dominion of Canada did not initially consider the effects on Indigenous Peoples when it encouraged non-Indigenous settlement northwestward. When a rebellion broke out, the Crown reconsidered its strategy. Looking to the Royal Proclamation's promise to engage in formalized treaties to cede Indigenous territories, and avoid the inconvenience of further Indigenous rebellion, the Government of Canada engaged in the Numbered Treaty negotiations. These treaties stretched over vast areas and encompassed many, diverse Indigenous communities. Halfway through this era, the Government of Canada finalized the Indian Act of 1876. It failed to inform Indigenous Peoples of these 'civilization' policies during negotiations, policies that greatly constrained their cultural freedoms and rights in the coming years. As Euro-Canadian perspectives of Indigenous cultures deteriorated, the use of forest diplomacy diminished until it had no part in the Williams Treaties of 1923.

Throughout this era, Indigenous Peoples consistently expressed concerns about and advocated for their hunting and fishing rights. Land *ownership* was not a familiar concept and therefore was not at the forefront of Indigenous negotiations. Indigenous Peoples adhered to concept of land stewardship, whereby families would take care of certain regions and their resources for future generations. This is not to say that conflicts did not arise over territories, but the Westphalia idea of definitive borders was not a familiar concept. Crown officials gave oral reassurances, but without a written record of these promises, they provided no protection in the coming years. As Julie Cruickshank points out, both written and oral accounts of the agreements endure.¹⁰³ The written account by the Government of Canada expresses different objectives and cultural perspectives than the oral accounts of Indigenous Peoples, reflecting their divergent views of the same events. Indigenous Peoples, believing in nonfixed boundaries, could not have

¹⁰³ Cruickshank, *Reading Voices*, 59.

conceived of surrendering all their lands permanently. As colonial ideals began to take hold in their territories, Indigenous Peoples lost trust in the Crown. The height of this mistrust and the spread of aggressive assimilationist policies occurred in the coming years.

The Department of Indian Affairs in the Northwest (the 1920s to 1944)

For some time now, the Indigenous population had been experiencing waves of epidemics that had reduced their numbers greatly. One such epidemic was the 1928 influenza epidemic that tore through Northwestern Canada and wiped out whole communities, leaving those who survived permanently scarred. Disease was not uncommon in Indigenous communities, but the devastation this flu caused was unprecedented.¹⁰⁴ It seems that many non-Indigenous people believed that the dwindling of Indigenous populations due to epidemics, coupled with the Indian Act's aggressive assimilationist policies, rendered moot the treaty promises of the past and made further negotiations unnecessary. Between 1781 and 1902, the Crown had concluded 483 treaties, adhesions, and land surrenders, providing the Government of Canada sufficient land and resources for settlers.¹⁰⁵ During the 1930s, Canada experienced the Great Depression, followed by WWII in the early 1940s, both of which put financial strain on Ottawa. After 1923, the Government of Canada halted treaty negotiations (except for some adhesions) until the 1970s.

By the inter-war years, colonial effects were more readily seen in the northwest of Canada. Disease accompanied more permanent changes like the development of transportation and communication infrastructure that increased government control and the settler population in the region.¹⁰⁶ The Department of Indian Affairs expressed sympathy for the plight of the

¹⁰⁴ Fumoleau, *As Long as This Land Shall Last*, 353.

¹⁰⁵ Fumoleau, *As Long as This Land Shall Last*, xxv.

¹⁰⁶ Fumoleau, *As Long as This Land Shall Last*, 283. By the 1920s the Northwest Territories had experienced the discovery of oil at Norman Wells, the collapse of the fur market, the first bank, permanent presence of large

Indigenous Peoples, stating in its 1936 year-end report: “Those Indians whose livelihoods depend on hunting and trapping for the most part experienced a poor year and the department was compelled to make, increased expenditures on their behalf.”¹⁰⁷ In contrast, the Department of the Interior enforced game laws. This legislation included closed season on beaver for three years with recommendations to extend the closure, and the Northwest Territories Game Act of 1929 that “regulated the use of caribou and moose meat, the dates for closed seasons, muskrat shooting, etc.”¹⁰⁸ The provinces of Alberta and Saskatchewan also enacted Game Laws in the 1920s that restricted Indigenous subsistence practices.¹⁰⁹ The Yukon’s game regulations will be discussed in Chapter Three.

As time passed, Ottawa and provincial governments acted as though they had forgotten their treaty promises. But Indigenous Peoples did not forget, and they felt abandoned by the Government of Canada. Indigenous Peoples, however, did not sit idly by while the Government of Canada reneged on its promises. Some communities banded together to protest the mistreatment. In 1937, the First Nations boycotted treaty annuities in Fort Resolution to protest game laws. Fumoleau notes active resistance to Indian Act policies, as well, including agricultural programs, the reserve pass system, the banning of traditional ceremonies like the

steamboats on the Mackenzie River, trucks, tractors, and airplanes, and a railway from Edmonton to Fort McMurray. A growing presence of government officials accompanied the establishment of the Territorial Administration.

¹⁰⁷ Department of Indian Affairs, “Dominion of Canada Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1936” (Ottawa, 1936), <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=32617>.

¹⁰⁸ Fumoleau, *As Long as This Land Shall Last*, 380.

¹⁰⁹ Fumoleau, *As Long as This Land Shall Last*, 387.

Potlatch¹¹⁰ and Sun Dance,¹¹¹ the work-for-rations rule, and residential schooling.¹¹² All these policies exemplified the civilization movement in the Department of Indian Affairs meant to assimilate Indigenous Peoples into settler society by enforcing the language and culture of the colonial powers, through segregation, schooling, and shame.

Ironically, through the residential school system, Indigenous Peoples gained awareness and knowledge of the Government of Canada and its judicial system; and many communities used this knowledge to their advantage. For example, when the Government of Canada ignored the Haudenosaunee's protests of the state's recognition of an elected council (elections mandated by colonial governments to replicate settler society's democratic principles) instead of their traditional hereditary chiefs that existed before contact, Chief Deskaheh petitioned the Supreme Court of Canada to have their case heard by the Privy Council in London, the highest court in Canada at the time. Although Chief Deskaheh lost his case, his actions demonstrate his ability to use the Government of Canada's system to assert the rights of his people.¹¹³

¹¹⁰ Catherine McClellan et al., *A History of the Yukon Indians: Part of Our Land, Part of Our Water* (Vancouver: Douglas & McIntyre, 1987), 215-216. The word "Potlatch" was used by Coastal Tlingit and southern Yukon Indigenous Peoples to "especially refer to the memorial ceremony held one or two years after someone's death. At this ceremony, the people in the moiety opposite that of a dead person carried out their last duties for the dead person's matrilineal relatives and then were given their final payments." Today, in Yukon First Nations communities, these ceremonies are also carried out after someone passes away as a funerary service. During the ceremony, there is a large feast and gift-exchanges. Rene R. Gadacz, "Potlatch," *The Canadian Encyclopedia* (Historica Canada, 2006), <https://www.thecanadianencyclopedia.ca/en/article/potlatch>. The Potlatch's purpose was to redistribute wealth and strengthen kinship relations within or between bands. In some areas, it is not a funerary practice, and has the sole purpose of strengthening communities.

¹¹¹ Truth and Reconciliation Commission of Canada, "Honouring the Truth, Reconciling for the Future The Truth and Reconciliation Commission of Canada," 2015, http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf. 4. More properly called the Thirst Dance. Rene R. Gadacz, "Sun Dance," *The Canadian Encyclopedia* (Historica Canada, 2006), <https://www.thecanadianencyclopedia.ca/en/article/sun-dance>. It is a ceremony during which participants tested their personal endurance through fasting and other means. It was also a social gathering where communities would come together to "renew kinship ties, arrange marriages, and exchange property."

¹¹² Fumoleau, *As Long as This Land Shall Last*, 387.

¹¹³ Donald B. Smith, "Deskaheh," *The Canadian Encyclopedia* (Historica Canada, 2006), <https://www.thecanadianencyclopedia.ca/en/article/levi-general>.

The Nisga'a Nation provides another example of Indigenous Peoples engaging in the judicial system, in this case to gain recognition of Indigenous Title to their lands. Their struggle began in 1887 when a group of Nisga'a chiefs journeyed to Victoria, British Columbia to speak with then Premier, William Smithe. Though the group was turned away from the Legislative Assembly, they gained an audience with a delegation of government officials, including the Premier. The Nisga'a began to plead with the Crown for a treaty. Smithe told Indigenous leaders that they had been misled, that there was no treaty negotiating law in "England and the Dominion Government." Jim Aldridge states that this denial could have stemmed either from Smithe's ignorance or from deliberate dishonesty. The recorded account of the affair is rife with patronizing remarks by Smithe and his colleagues toward the First Nations delegation, speaking about them as if they were not there and continually telling them they were mistaken.¹¹⁴

The Nisga'a were not deterred in their fight for land rights. After returning to their community, they formed the Nisga'a Land Committee and hired a lawyer, Arthur O'Meara. In 1913, O'Meara helped the land committee file a petition to send to the Privy Council in London, which forwarded the petition to Ottawa, where the Government of Canada initially ignored it. Because the petition had invoked the Royal Proclamation of 1763, however, this was not possible, and Duncan Campbell Scott, the head of the Department of Indian Affairs from 1913 to 1932, was forced to address the community's concerns to uphold the *honour of the Crown*; that is, to consult with and to respect and treat Canadian Indigenous peoples with integrity. Nisga'a leaders travelled to Ottawa and demonstrated their understanding of their Indigenous Title rights. Campbell Scott and his colleagues responded to this well organized, legally backed delegation in

¹¹⁴ Jim Aldridge, "The 1998 Nisga'a Treaty," in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, ed. Terry Fenge and Jim Aldridge (McGill-Queens University Press, 2015), 138–52. 140.

1927 by amending the Indian Act to make it illegal to raise money to pursue land claims.¹¹⁵ Thus hindered in their Indigenous Title claim, the Nisga'a returned to their community to regroup.

Campbell Scott, a firm believer in the aggressive assimilation policies of the Indian Act, sought to expand them during his tenure.¹¹⁶ For example, when F.O. Loft, a Mohawk man, created the League of Indians,¹¹⁷ Campbell Scott introduced a bill that would enforce enfranchisement of Indigenous individuals, which would deprive them of their Indian status. From 1920 to 1922 and again from 1933 to 1951, the Enfranchisement Act remained in force. Parliament viewed the act as ineffective, however, and therefore revoked it in 1951. Campbell Scott also enforced residential school attendance and ignored the deteriorating health condition of Indigenous communities as waves of epidemics swept through them. These schools were church run through government funding, and heralded as the “circle of civilized conditions,” whereby the child was saved from the “savage” parent to receive a Christian education. The deplorable health conditions and abuse (sexual, mental and physical) of children as young as seven (though there are recorded cases of younger) were ignored by government officials in favour of creating a non-Aboriginal Canadian community,¹¹⁸ or as Campbell Scott put it, to “get rid of the Indian problem.”¹¹⁹ According to Titley, shortly after Campbell Scott retired in 1932,

¹¹⁵ Aldridge, “The 1998 Nisga’a Treaty,” 142.

¹¹⁶ Aldridge, “The 1998 Nisga’a Treaty,” 142.

¹¹⁷ Chinook Multimedia, “1919 - Frederick Loft and the League of Indians,” Canada History, 2018, <https://canadianhistory.ca/natives/timeline/1910s/1919-frederick-loft-and-the-league-of-indians>. “The league fought for the preservation of reserve lands and their protection from the arbitrary hand of the government. The league also sought to protect Native rights, leading the battle against the involuntary enfranchisement provisions of the Indian Act passed in 1920.”

¹¹⁸ John S. Milloy, *A National Crime: The Canadian Government and the Residential School System: 1879 to 1986* (Winnipeg: The University of Manitoba Press, 1999), xii, 3. Titley, *The Indian Commissioners*, 193-194.

¹¹⁹ Robert L. McDougall, “Duncan Campbell Scott,” *The Canadian Encyclopedia* (Historica Canada, 2008), <https://www.thecanadianencyclopedia.ca/en/article/duncan-campbell-scott>.

the Government of Canada began to recognize that its civilization policies were not effective, and confidence in its mission faltered.¹²⁰

During the early years following confederation, Indigenous Peoples experienced severe hardships. No longer were they needed for the fur trade or as allies in colonial wars. With the shift to immigration mandates and land development, Canadians saw Indigenous Peoples as an obstacle to settler society's growth. The Indian Act of 1876 consolidated Indigenous-related policies that became focused on aggressive assimilation. Additional policies were added to the act over time, especially under the Department of Indian Affairs' leadership of Duncan Campbell Scott. Government ignored diplomacy and the promises outlined in the Royal Proclamation of 1763 during this era, as anything outside colonial culture was considered backwards and counterproductive to assimilating Indigenous Peoples. This disparagement of Indigenous cultures and the continual economic struggles and disease Indigenous Peoples experienced would cause trauma for generations of First Nations, Métis, and Inuit across Canada.

Yet, "the Indian problem," did not fade away quickly as early government officials anticipated. Instead, through resistance to assimilation, Indigenous Peoples caused the Department of Indian Affairs to reflect on the faults in its civilization policy. As awareness of human rights grew in the mid-twentieth century, Indigenous rights came to be viewed in a new light. Indigenous voices were finally considered.

¹²⁰ Titley, *The Indian Commissioners*, 211.

The Rise of Indigenous Rights (1940s-1969)

Following WWII, a human rights movement emerged globally.¹²¹ Many Indigenous Canadians had experienced life outside Canadian reserves. Responding to evolving public opinion on Indigenous rights, and pressure from both Indigenous and non-Indigenous veterans, the Government of Canada held a Joint Senate and House of Commons Committee on the Indian Act in 1946 to 1949. The Joint Committee first conducted their research without input from Indigenous Peoples, but when Indigenous leaders rejected their findings, they included Indigenous voices as they continued the research.¹²²

The Joint Committee considered the impact of the Indian Act on Indigenous Peoples, including reserve land rights, infrastructure and commerce on reserves, Indian Status, council powers, and taxation. In addition, the Joint Committee examined the aggressive assimilation policies of residential schooling and enfranchisement. The Joint Committee proposed multiple changes to the Indian Act. Recommendations included allowing Indigenous Canadians to vote in federal elections, the establishment of an Indian claims commission to “deal with long-standing grievances that were impeding Indian participation in Canadian society,” and allowing Indigenous bands to “develop their own charters or constitutions for self-government.”¹²³ Although most of these recommendation were rejected, the government nevertheless adopted substantial changes to the Act in September 1951, including lifting the ban on Indigenous Peoples raising money for legal fees and pursuing land claims.¹²⁴ This modification allowed Indigenous Peoples to pursue their rights in the Modern Land Claims Era.

¹²¹ Mark D. Walters, “Promise and Paradox: The Emergence of Indigenous Rights in Canada,” in *Indigenous Peoples and the Law: Comparative and Critical Perspectives*, ed. Benjamin J Richardson, Shin Imai, and Kent McNeil (Portland: Hart Publishing, 2009), 32.

¹²² John F. Leslie, “The Indian Act: An Historical Perspective,” *Canadian Parliamentary Review* 25, no. 2 (2002), 25.

¹²³ Leslie, “The Indian Act,” 26.

¹²⁴ Leslie, “The Indian Act,” 26.

A second Joint Committee was organized between 1959 and 1961 under John Diefenbaker's Conservative Government and resulted in Indigenous Canadians gaining the right to vote. Under Lester B. Pearson's Liberal Government, the Hawthorn Report of 1966 coined the term *citizens-plus* for Indigenous Peoples, a concept that will be discussed in greater detail in *Chapter Four: Indigenous Rights in Canada*. Recognizing the importance of including Indigenous voices in policymaking, the report's ninety-one proposals for changes to the Indian Act reflected consultation meetings with Indigenous communities. The findings showed that Indigenous Peoples wanted greater self-government, more funds for economic and social development, settlement of land claims, protection of treaty rights, and constitutional recognition of aboriginal rights.¹²⁵ Also under Pearson's leadership, the Department of Indian Affairs and Northern Development (DIAND) was established in 1966.¹²⁶

Importantly, around this time that Indigenous Rights were coming to the forefront of Canadian consciousness, the Government of Canada began enacting multiple forced relocations of Indigenous Peoples. These included the Ihalmiut who were moved from Ennadai Lake to Nueltin in 1946, then again in 1957 to Henik Lake (a journey of 45 miles) and later the same year to Whale Cove. They were forced to move three more times in the coming two years. From 1953 to 1955, a number of Inuit from northern Quebec were relocated to remote Arctic areas where they were promised government aid and return transportation if conditions were not livable. This promise was forgotten once the Inuit families disembarked resulting in years of limited food and supplies. The Government of Canada has since apologized for both of these

¹²⁵ Leslie, "The Indian Act," 26.

¹²⁶ Derworiz, "Federal Department of Indigenous and Northern Affairs."

actions,¹²⁷ including the relocation of Sayisi Dene.¹²⁸ The generational trauma experienced by the Sayisi Dene is explained in great detail by Ila Bussidor, a community member who was a child when her family was forced to relocate from Little Duck Lake in northern Manitoba to Churchill in 1956. She recalls how her community was “reduced to humiliation” the “victims of cruel discrimination from other ethnic groups – the whites, the Inuit, the Métis and the Cree.” The Government of Canada also recently apologized for the harm to Inuit who sought treatment for tuberculosis. A database shows around 4,500 names of Inuit who died after being relocated for treatment from the 1940s to the 1960s. The families had not known what had happened to their relatives until recently. The Government of Canada mistreated other Indigenous individuals by forcing them to fly south for medical treatment. These government actions, however, were not widely discussed. Instead, the more southerly disputes caught the media’s attention.

Prime Minister Pearson’s retirement in 1968 led to the election of Pierre Elliot Trudeau’s Liberal Government, and the appointment of Jean Chrétien as head of the DIAND that year. This new leadership disregarded the Hawthorn Report’s findings in its *Statement of the Government of Canada on Indian Policy*, also known as the *White Paper, 1969*. The document rejected the *citizens-plus* theory along with the goal of settling land claims. Instead it proposed an end to the Indian Act altogether, which would have abolished Indian Status, and it proposed to phase out the Department of Indian Affairs.¹²⁹ The White Paper was met with vociferous protests by Indigenous activists, who saw the statement as a return to the pre-WWII aggressive assimilationist policies. Although the Indian Act had been harmful to the cultural and physical

¹²⁷ CBC News, “Inuit Get Federal Apology for Forced Relocation,” *CBC News*, August 18, 2010, <https://www.cbc.ca/news/canada/north/inuit-get-federal-apology-for-forced-relocation-1.897468>. Alex Brockman, “Ottawa to Apologize for Forced Relocation of Ahlarmiut in Nunavut,” *CBC News*, January 16, 2019, <https://www.cbc.ca/news/canada/north/federal-government-apology-ahlarmiut-forced-relocation-1.4980762>.

¹²⁸ CBC News, “‘We Are Sorry’: Ottawa Apologizes to Manitoba’s Sayisi Dene for Forced Relocation,” *CBC News*, August 16, 2016, <https://www.cbc.ca/news/canada/manitoba/sayisi-dene-apology-1.3723569>.

¹²⁹ Leslie, “The Indian Act,” 27.

well-being of Indigenous Peoples in Canada, it officially recognized their unique rights.

Trudeau's Liberal Government recognized its mistake and revoked the *White Paper, 1969* a year later, but by then it had caused a deterioration in Indigenous-Crown relations, as Indigenous Peoples viewed the Government of Canada with distrust.

The *White Paper, 1969* debacle heightened Indigenous activism and academic productivity, creating a ripple effect in public opinion and court decisions. Harold Cardinal's book *An Unjust Society* responded to Pierre Elliot Trudeau's Liberal Party platform of *a just society*, which expressed a belief in liberalism or equal opportunity for all. Cardinal highlighted the Crown's dishonest transactions with Indigenous Peoples and the Liberal Government's attempt at cultural genocide by eradicating the Indian Act. He denounced the government's recent actions stating: "The present course of the federal government drives the Indian daily closer and closer to... despair, hostility, destruction."¹³⁰ But he also extended a proposal for cooperation. "There exists a belief among our people that we were given this country to share with all peoples and to ensure that its natural resources are used for the good of mankind."¹³¹

The years following the 1969 tempest marked a turning point in Settler-Canadians' perceptions of Indigenous Peoples within Canadian society. Had the *White Paper, 1969* been proposed under the leadership of Duncan Campbell Scott before WWII, little public protest or Indigenous activism would have resulted, and it would have been implemented, owing to the prevalent belief at the time that Indigenous Peoples should assimilate for their own good. In the 1970s, however, as Indigenous complaints were highlighted in protests and addressed in government reports, Canadians became mindful of the need for the Government of Canada to

¹³⁰ Cardinal, *The Unjust Society*, 144.

¹³¹ Cardinal, *The Unjust Society*, 145.

improve its relations with First Nations, Métis, and Inuit. Judicial proceedings in the 1970s involving Indigenous title reflected this shift in public opinion.

The Nisga'a returned to the courts to once again pursue their land rights in the 1973 *Calder Case*; this time in a judicial system exposed to more perspectives. As noted above, the Nisga'a struggled to have their case heard by the courts during the height of the aggressive assimilationist policies, especially when the government prohibited fundraising for Indigenous land claims. In 1955 the Nisga'a Tribal Council formed, electing Frank Calder as their president. The council pursued their land claim, and in 1967 the Nisga'a Nation brought an action against the Attorney General of British Columbia. The First Nation asked "for a declaration that the Aboriginal title of the Nisga'a Nation had never been lawfully extinguished,"¹³² and therefore they had a right to treaty negotiations with the Government of Canada. Though the Supreme Court of Canada ruled in January 1973 that the Nisga'a Nation's land title had been extinguished in provincial legislation before British Columbia joined Canada,¹³³ the Court recognized Indigenous Title, a landmark precedent.¹³⁴ This meant that the Government of Canada had to engage in treaty negotiations to acquire Indigenous traditional territory.¹³⁵ Prime Minister Pierre Elliott Trudeau replied to Canada's Indigenous Peoples following the court decision, "perhaps you have more legal rights than we thought when we did the White Paper,"¹³⁶ reflecting a dawning recognition of Indigenous rights in Canada.

Jean Chrétien responded by shifting the direction of the Department of Indian Affairs' policy in August 1973 with a statement that the Government of Canada would respect the *Calder*

¹³² Aldridge, "The 1998 Nisga'a Treaty," 142.

¹³³ Aldridge, "The 1998 Nisga'a Treaty," 143.

¹³⁴ David A. Cruickshank, "Calder Case," *Canadian Encyclopedia* (Historica Canada, 2006), <https://www.thecanadianencyclopedia.ca/en/article/calder-case>.

¹³⁵ Aldridge, "The 1998 Nisga'a Treaty," 144.

¹³⁶ Christopher Alcantara, *Negotiating the Deal: Comprehensive Land Claims Agreements in Canada* (Toronto: University of Toronto Press, 2013), 3.

Case ruling and engage in land claims. The Comprehensive Land Claims Policy (CLCP) in 1973 recognized the Government of Canada's fiduciary duty to negotiate land claims with Indigenous Peoples where Indigenous Title on unceded lands could be proven through traditional use and occupancy of land.¹³⁷ Pierre Elliott Trudeau's Liberal Government had come a long way in just four years.

Both the activism against the *White Paper, 1969* and the 1973 *Calder Case* ruling have had profound effects in subsequent Indigenous land claims across Canada. When Pierre Elliot Trudeau took office in 1968 as Prime Minister of Canada, he had supported Chretien's move to ignore the anti-assimilation policies that were advancing following WWII. But Indigenous activism and growing public support for respecting Indigenous rights prevented the abolishment of the Indian Act. The *Calder Case* endorsed and solidified these perspectives, causing Trudeau to acknowledge that Indigenous rights and Indigenous Peoples could not be erased in a liberal *just society*. Chrétien's announcement of the Government of Canada's new policy of reinstating treaty negotiations with Indigenous Peoples across Canada officially marked this about-face. The James Bay Cree of northern Quebec were the first to engage in the modern land claim process.

¹³⁷ Alcantara, *Negotiating the Deal*, 3.

CHAPTER THREE: THE MODERN LAND CLAIMS ERA

Liberal Government – Pierre Elliot Trudeau (1968-1979; 1980-1984)

Prospects for resource development in northern Canada have consistently played a divisive role in Indigenous-Crown relations. In the early 1970s, the James Bay Cree, or Eeyouch, of Northern Quebec were forced into treaty negotiations when the Government of Quebec announced their plans to develop three hydroelectric dams on Eeyouch traditional territory. These dams would divert rivers, causing the flooding of Eeyouch hunting and burial grounds. Quebec Premier Robert Bourassa publicized the project on the radio in 1971 without consulting the Eeyouch, and soon construction began on site. The Eeyouch began protesting, and the Government of Canada responded that their land rights were granted “at the pleasure of the Crown.”¹

This position dated back to the 1889 court case, *St. Catherine’s Milling v The Queen*.² The *Calder Case* had changed this precedent, however, stating instead that Indigenous Title existed on unceded territory regardless of the Crown’s actions. The differences in the outcomes of these cases reflect the times in which they took place, *St. Catherine’s Milling* during the height of the Numbered Treaties era and aggressive assimilation policies in the 1880s; and *Calder* during the rise of Indigenous activism and a growing awareness of Indigenous rights in the 1970s. The *Calder Case* ruling would benefit the Eeyouch and open the door for the Modern Land Claims Era in Canada.

¹ Matthew Coon Come, “Cree Experience with Treaty Implementation,” in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, ed. Terry Fenge and Jim Aldridge (Montreal: McGill-Queens University Press, 2015), 156.

² William B. Henderson, “Canada’s Indian Reserves: The Usufruct in Our Constitution,” *Ottawa Law Review* 12 (1980): 167. The legal proceedings were centered around whose jurisdiction, federal or provincial, it was to grant logging licenses on unceded territory. In the end, the provincial government of Ontario won, even after three appeals. The case acknowledged Indigenous title, however, “the tenure of the Indians was a personal and usufructuary right, dependent upon the good will of the Sovereign.”

Due to the recognition of Indigenous Title in the *Calder Case* and the CLCP, the James Bay and Northern Quebec Agreement (JBNQA) was signed in November 1975. Although the CLCP provided for Indigenous agency in the development of their lands, the years following the JBNQA were not favourable for the Eeyouch. As Matthew Coon Come has stated, in the years following the JBNQA, the Government of Canada repeatedly broke promises. Coon Come relates that once the federal and provincial governments “...had obtained the surrenders and extinguishments that they wanted... the governments of Canada and Quebec took the position that the JBNQA went too far, and they refused to provide the necessary funding to furnish the health, sanitation, and community services [the Eeyouch] needed and which were promised to [the Eeyouch] under the JBNQA.”³

Years of hardship followed for the Eeyouch, who took the governments to court to resolve treaty disputes. In 2002, the Government of Quebec and the Cree Nation (including the Eeyouch) signed an agreement promising that the Government of Quebec would fulfill treaty obligations by providing economic and social development funding for the next fifty years.⁴ Since the beginning of the modern treaty era, treaty negotiations have been an on-going process, in which the Government of Canada has struggled to fulfill its obligations and commitments.

Since WWII, DIAND had seen great changes in Indigenous-Crown relations. By 1980 increasing public awareness of Indigenous rights significantly influenced Indigenous land claims. In 1979, DIAND released a formal policy statement titled, *In All Fairness*, which reflected on Indigenous-Crown relations since 1973, and how the Government of Canada would proceed with future treaty agreements. It emphasised the necessity of making treaties “final” to provide clarity on land and natural resource ownership and to have a “specific and finite”

³ Coon Come, “Cree Experience with Treaty Implementation,” 158.

⁴ Coon Come, “Cree Experience with Treaty Implementation,” 166.

declaration of monetary compensation. *In All Fairness* also stated that negotiations were for “non-political” issues like “cash compensation, wildlife rights, and may include self-government on a local basis.”⁵ In other words, the government took the position that treaties were not an on-going process and that land acquisition remained at the center of negotiations.

As *In All Fairness* began to be applied in the comprehensive land claims process, Indigenous groups involved in negotiations came to view the policy statement as the Trudeau Government’s continued attempt to extinguish Indigenous Title and rights instead of seeking cooperation. Indigenous negotiators highlighted the Government’s use of a “simple land-and-cash formula” that resembled the negotiations during the Numbered Treaties era. They sought long term solutions that maintained their rights while providing health care, economic aid, and environmental and cultural protection. The “finality” goal of *In All Fairness* did not allow for Indigenous agency in the economic growth of their lands as they would lose that right once the treaty was signed. In their view, *In All Fairness* did not foster positive Crown-Indigenous relations in Canada.

The second term of Pierre Elliot Trudeau’s Government would not be remembered for drafting *In All Fairness* as it was remembered for the *White Paper, 1969*. Instead, Trudeau’s great achievement was the *Constitution Act of 1982*. Section 35 of this landmark document addressed Indigenous-Crown relations in Canada, reflecting the growing awareness of Indigenous rights, stating:

1. The existing aboriginal and treaty rights of the aboriginal people in Canada are hereby recognized and affirmed;
2. In this Act, “Aboriginal Peoples of Canada” includes the Indian, Inuit, and Métis Peoples of Canada;

⁵ Terry Fenge, “Negotiation and Implementation of Modern Treaties between Aboriginal Peoples and the Crown in Right of Canada,” in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, ed. Terry Fenge and Jim Aldridge (Montreal: McGill-Queens University Press, 2015), 110.

3. For greater certainty, in subsection 1, “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired;
4. Notwithstanding any other provision of this act, the aboriginal and treaty rights referred to in subsection 1 are guaranteed equally to male and female persons.⁶

The addition of this section owed to the perseverance of Indigenous activists and their supporters. As Arthur Manuel points out, achieving the affirmation of Indigenous rights in the *Constitution Act* was a battle to the end. Trudeau’s Government made promises to add Section 35, and then at the last minute removed it, only to add it again when the government was “met with a storm of protests so strong that the premiers themselves were forced to begin a series of conference calls.”⁷ Trudeau’s time in office has had a significant effect on Indigenous rights, whether intentionally or not. The liberalist policy statements released by his government heightened Indigenous activism that pushed for greater recognition of Indigenous rights in Canada, which in turn influenced public opinion to support Indigenous rights and revision of regressive DIAND policies. This positive feedback loop continues to influence the Government of Canada and Canadians.

Conservative Government - Brian Mulroney (1984-1993)

Brian Mulroney’s Progressive Conservatives (PC) took office in 1984 with the promise of thoughtfully addressing Indigenous-Crown relations and the land claims process. Murray Coolican, as Deputy Minister of Indian Affairs, chaired a task force charged with revising land claims policies that produced the *Coolican Report* in 1986. Also known as *Lasting Treaties: Lasting Agreements* (LTLA), it reviewed the Comprehensive Land Claims Policy to make recommendations for future negotiations. The title itself indicates the policy’s intention to

⁶ Department of Justice, “Constitution Acts, 1867 to 1982,” Government of Canada, 2019, <https://laws-lois.justice.gc.ca/eng/const/page-16.html#docCont>.

⁷ Arthur Manuel and Grand Chief Ronald Derrickson, *Unsettling Canada: A National Wake-Up Call* (Toronto: Between the Lines, 2015), 74.

improve relations with Indigenous Peoples. Instead of extinguishment of Indigenous Title to land, LTLA sought cooperative relationship building, through which Indigenous communities and governments of Canada shared the wealth generated from natural resource development. It saw treaty negotiations as an on-going process and encouraged transparency during talks. Unlike past Liberal DIAND policy announcements, the PC Government garnered a positive response from Indigenous communities.⁸

Members of Parliament, on the other hand, expressed skepticism. Their concerns lay with the financial strain of continued aid and the avoidance of the extinguishment of Indigenous rights in land claim settlements that would result in sharing revenue. Mulroney reshuffled his cabinet, and under new leadership, DIAND announced that it would once again seek to finalize land claims agreements through an updated CLCP. It seems LTLA's focus on cooperation was ahead of its time. Amendments of the CLCP brought some improvements in Indigenous-Crown relations. These included the maintenance of Indigenous rights, except land rights, post-settlement; acceptance of growing powers of self-government; resource revenue sharing; and commitment to consult and fully communicate intentions.⁹

Following the CLCP's announcement, the number of land claims negotiations increased, with a total of twenty-four modern land claims signed from 1973-2014. These land claims apply to most of northern Canada and have given northern Indigenous Peoples in Canada more land ownership than any private interest globally.¹⁰ Even British Columbia, which once adhered to the doctrine of *terra nullius*, began to engage in treaty negotiations after 1991. That same year,

⁸ Fenge, "Negotiation and Implementation of Modern Treaties," 113-114.

⁹ Fenge, "Negotiation and Implementation of Modern Treaties," 116-117

¹⁰ Terry Fenge and Jim Aldridge, "In Conclusion," in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, ed. Jim Aldridge and Terry Fenge (Montreal: McGill-Queen's University Press, 2015), 194-206.

the Government of Canada established the *Royal Commission on Aboriginal Peoples* to address the harm done by paternalistic government policies and the resulting issues that hindered peaceful coexistence.¹¹

Under the Mulroney PC Government, the Government of Canada attempted to patriate the constitution through the Meech Lake Accord,¹² but it failed. Oji-Cree Member of the Legislative Assembly (MLA) of Manitoba, Elijah Harper, refused to give his support, which was needed for ratification. He explained that his decision to vote against the Accord was based “on the grounds that First Nations had not been consulted or recognized in the constitutional discussions around the Meech Lake Accord.”¹³ Because of Harper’s position as an MLA, he was able to influence federal policies that could potentially affect Indigenous Peoples. Indigenous Peoples are increasingly gaining access to a system that historically repressed their rights and sought to assimilate them. In recent decades, First Nations, Métis and Inuit have become a formidable force within the nation-state that consistently reminds Parliament and the judiciary of their Indigenous rights. The Meech Lake Accord highlighted how one, well-placed Indigenous voice can stop the federal government from ignoring Indigenous Peoples.

Systemic advancements have halted Indigenous rights activism. In the Oka Crisis of 1990, the Mohawk barricaded their traditional burial grounds to guard against a planned golf

¹¹ Indigenous and Northern Affairs Canada, “People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples” (Ottawa, 1996), <https://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637>.

¹² Patrick Malcolmson et al., *The Canadian Regime: An Introduction to Parliamentary Government in Canada*, Sixth (North York: University of Toronto Press, 2016). The Meech Lake Accord responded to Quebec’s refusal to support the Constitution Act of 1982. Quebec felt that the division of powers outlined in the 1982 patriation did not give the province enough agency over affairs pertaining to the people of Quebec. Mulroney sought to gain the support of all the provinces, including Quebec, through the Meech Lake process. The Meech Lake Accord was followed by the Charlottetown Accord, which was also defeated. There have been no further attempts at amending the Constitution to garner the support of all provinces, owing to the difficulty in satisfying all stakeholders.

¹³ Tabitha Marshall, “Elijah Harper,” *The Canadian Encyclopedia* (Historica Canada, 2017), http://www.thecanadianencyclopedia.ca/en/article/elijah-harper/#h3_jump_2.

course. The standoff followed years of the community's engagement in the judicial system to resolve a land dispute. Conditions escalated when the mayor requested help from the provincial police. Soon after police arrived, a gun fight ensued between the Mohawk and the police that resulted in the death of an officer. The RCMP were soon called in to support the police. Media coverage of the standoff allowed Canadians to witness the current state of Indigenous-Crown relations, unlike the Red River Rebellion, when a lack of transparency allowed the government to portray those responsible for the uprising as treasonous and provided the Métis no means of communicating their perspectives. The video footage of the Oka Crisis allowed Canadians to witness interactions between Mohawk Warriors and the Canadian Armed Forces. Many Canadians were shocked to see such violent clashes within Canada.¹⁴ Violent confrontations between Indigenous Peoples and the nation-state have continued in Canada as Indigenous Peoples have asserted their Indigenous rights within the nation-state as they face the threat of irreversible damage of their traditional territories.¹⁵

Liberal Government – Jean Chrétien (1993-2003) and Paul Martin (2003-2005)

Indigenous activism in the early 1990s continued to address the need to renew Indigenous-Crown relations in Canada. In 1996, the *Royal Commission on Aboriginal Peoples* released a five volume, 4,000-page final report that addressed ways that the Government of Canada could create a new relationship with First Nations, Métis, and Inuit. The report called for respecting Indigenous cultures and values and a new treaty process focused on self-

¹⁴ CBC News, "The Oka Legacy: Oka Timeline: An Unresolved Land Claim Hundreds of Years in the Making," CBC News, accessed November 20, 2017, <http://www.cbc.ca/firsthand/features/oka-timeline-an-unresolved-land-claim-hundreds-of-years-in-the-making>.

¹⁵ Subsequent Indigenous standoffs have included the Burnt Church with Miq'mawk from 1999 to 2002, Gustafson Lake Standoff with Ts'peten in 1995, Ipperwash Crisis with Ojibway in 1995, or more recently the Unist'ot'en Pipeline Standoff in 2019.

determination, self-government and “mutual recognition” instead of Indigenous Title extinguishment. The projected costs of implementing the report were billions of public dollars. With an aim to lower Canada’s debt, newly elected Prime Minister Jean Chrétien did not devote federal time or money to implementing the commission’s many recommendations. Chrétien’s Liberal Government did announce an *Aboriginal Self-Government Policy* in 1996 that would recognize Indigenous Peoples’ “inherent” right to self-govern while maintaining the constitutional framework.¹⁶ This new policy influenced subsequent modern land claims, including the Umbrella Final Agreement in the Yukon, which will be discussed in more detail in the next chapter.

The *Redefining Relationships* conference held in 2003, with 350 participants, addressed the need for cooperation between Indigenous Peoples and the Crown. The conference resulted in the creation of a Land Claims Agreements Coalition (LCAC) to advise the Government of Canada in implementing a “Modern Treaty Implementation Policy” that would alter the Crown’s approach to treaty agreements. Policy changes would include: the Crown, as opposed to DIAND,¹⁷ as in Right of Canada during settlements; adequate funding to achieve federal commitments; and the need for an independent implementation audit and review body. This last recommendation was already in progress. Shortly after the LCAC announced its recommendations, the Auditor General released an audit of DIAND that voiced the same concerns Indigenous Peoples had been voicing for some time: that DIAND was measuring the

¹⁶ Fenge, “Negotiation and Implementation of Modern Treaties,” 123.

¹⁷ This would mean the Crown, which holds a constitutional duty to consult and uphold Indigenous treaty rights, would be responsible to work cooperatively with Indigenous Peoples in land claims. The change recognized that DIAND, a department responsible for both Indigenous affairs and resource development in the north, should not represent the government in negotiations.

success of Indigenous-Crown relations based on meeting attendance and events held, instead of evidence of long-term, effective solutions.¹⁸

A change in leadership within the Liberal Party brought a shift in Indigenous-Crown relations in 2004. Paul Martin's election as Prime Minister in 2004 brought a new approach in reconciliation - a term that was growing in popularity within the Government of Canada and Canadian society. The Liberals' *Kelowna Accord* in 2005 proposed improvements in health, education, sanitation, living conditions, and employment, for Indigenous communities. *The Collaborative Development of a New Implementation Policy*, which sought an effective means of implementing treaty agreements that satisfied all governments, was also being finalized under Martin's leadership.¹⁹ When the Liberals lost power in the House of Commons, however, the work of Martin's government was soon repealed, including the *Kelowna Accord*.

Conservative Government – Stephen Harper (2006-2015)

Prime Minister Stephen Harper did not prioritize renewal of Indigenous-Crown relations. Unlike his Conservative predecessor, Brian Mulroney, Harper did not begin his term with an Indigenous-policy draft aimed at reconciliation. Instead, the Harper Government dismissed the *Kelowna Accord* and disbanded the Cabinet Committee on Aboriginal Peoples. His lack of concern for Indigenous issues is reflected in his government's Arctic Policy, titled *The Government of Canada's 2009 Northern Strategy*, which omits any mention of modern treaties. This disregard of Indigenous concerns will be discussed in more detail in relation to the Umbrella Final Agreement in *later chapters*.

¹⁸ Fenge, "Negotiation and Implementation of Modern Treaties," 126.

¹⁹ Fenge, "Negotiation and Implementation of Modern Treaties," 126.

The Senate Standing Committee on Aboriginal Peoples, however, continued the slow progress that Parliament had made in the recognition of Indigenous rights. In 2008, it released *Honouring the Spirit of Modern Treaties: Closing the Loopholes* that outlined the issues surrounding effective implementation of comprehensive treaties, including financial matters. The Senate Committee held a public hearing to include Indigenous perspectives in the development of the report. Significantly, the *Honoring the Spirit of Modern Treaties* document declared that the failure of DIAND's Indigenous policies to foster positive relations with Indigenous Peoples must be rectified to uphold the honour of the Crown.²⁰

The honour of the Crown has been mentioned with increasing frequency in recent years, regarding Indigenous rights in Canada. The concept dates back to the Royal Proclamation of 1763 that not only acknowledged Indigenous title but outlined treaty procedures to be followed when Indigenous Peoples ceded their territories. Brian Slattery explains: "The ultimate purpose of the honour of the Crown, says the Court, is the reconciliation of pre-existing Aboriginal societies with the assertion of Crown sovereignty. The doctrine has been enshrined in section 35 of the Constitution Act of 1982 which recognizes and affirms existing Aboriginal rights and envisages the negotiation of just settlements of Aboriginal claims."²¹

To uphold the honour of the Crown, to uphold society's trust in our governing body, the Government of Canada has a duty to negotiate treaties with Indigenous Peoples in good faith. The Crown must act conscientiously during negotiations, with a broad understanding of what has been negotiated and liberally interpreting the promises that are enshrined in the treaties. The

²⁰ Fenge, "Negotiation and Implementation of Modern Treaties," 129.

²¹ Brian Slattery, "The Royal Proclamation of 1763 and the Aboriginal Constitution," in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, ed. Terry Fenge and Jim Aldridge (Quebec: McGill-Queens University Press, 2015), 16.

Crown should also be cognizant of differing worldview's interpretations of agreements.²² The Government of Canada should be working with Indigenous Peoples to ensure that the Crown maintains its fiduciary duty. The Harper Government's DIAND failed to do so. The Supreme Court of Canada, however, had shown that it was prepared to uphold this responsibility in several cases that have defined the Crown's duty to consult.²³

The LCAC recognized the Harper Government's shortcomings in successful treaty implementation and outlined recommendations in a model policy for the government to improve this process. One of these suggestions was to regard modern treaties "in a lasting, generous, and flexible manner;" a similar idea to that suggested in the *Coolican Report*. The Harper Government did not respond directly to the LCAC, but instead renamed DIAND the Department of Aboriginal Affairs and Northern Development Canada (AANDC). Under this new title the department announced that its research had shown that modern treaties were more complicated and costly, making implementation challenging. By using a multi-department approach, AANDC proposed to work cooperatively with Indigenous Peoples to find solutions to effective implementation.²⁴

The new policy held no significant changes for treaty negotiations, and Indigenous-Crown relations did not improve under the Harper Government. In fact, due to the Government's continued ineffectiveness in implementing its treaty obligations after years of stating the same

²² Slattery, "The Royal Proclamation of 1763 and the Aboriginal Constitution," 29-31.

²³ Robert Irwin, "Duty to Consult," *The Canadian Encyclopedia* (Historica Canada, 2018), <https://www.thecanadianencyclopedia.ca/en/article/duty-to-consult>. The Haida Case of 2004 stated: "Depending on the circumstances... the honour of the Crown may require it to consult with and reasonably accommodate Aboriginal interests pending resolution of the claim. To unilaterally exploit a claimed resource during the process of proving and resolving the Aboriginal claim to that resource, may be to deprive the Aboriginal claimants of some or all of the benefit of the resource. That is not honourable." The Mikisaw Cree Case of 2010 saw the duty to consult extended to acts that may negatively affect treaty rights. The Beckman v. Little Salmon/Carmacks of 2010 ruled that the agreements in modern land claims do not absolve the Crown of its duty to consult. The Peel Watershed Case of 2018 maintained the Crown's duty to consult. This case will be discussed in more detail in a later chapter.

²⁴ Fenge, "Negotiation and Implementation of Modern Treaties," 128.

promises in different ways, the Crown has faced litigation. Nunavut Tunngavik Inc., Inuit legal representatives in modern land claims, for instance, sued the Government of Canada for \$1 billion for unfulfilled treaty obligations.²⁵ The minister of AANDC from 2010 to 2013 did not consider the Inuit's dissatisfaction, or any of the other legal disputes that were in the courts at the time, as a sign of a strained relationship, claiming instead that implementation issues had greatly improved.²⁶

This ignorance is detrimental to Crown-Indigenous relations. By ignoring concerns surrounding treaty implementation and the honour of the Crown, the Government of Canada can leave itself vulnerable to legal recourse from Indigenous Peoples. Increasingly, Indigenous activists have asserted themselves in court cases and in government proceedings, including blocking the patriation of the Constitution. If the House of Commons has misgivings about the financial strain that fulfilling treaties may entail, it should consider the costs of ignoring treaty promises. In 2006, NTI won its court battle with the Government of Canada and was awarded \$15 million in damages. Such failure to fulfill promises to Indigenous Peoples that ends in legal complaints is not conducive to a sustainable future for the Government of Canada. It breeds resentment on both sides and fosters perceptions of the other as the enemy. Canada must find a means of cooperation with Indigenous communities.

Consistency and goodwill from the Government of Canada would do much to foster trust in Crown-Indigenous relations. During Harper's leadership, DIAND/AANDC had five different ministers.²⁷ This resembles the tumultuous years prior to Confederation when department heads

²⁵ Fenge, "Negotiation and Implementation of Modern Treaties," 128.

²⁶ Fenge, "Negotiation and Implementation of Modern Treaties," 134.

²⁷ Office of the Prime Minister of Canada, "The Canadian Ministry," Government of Canada, 2015, <https://web.archive.org/web/20131031184302/http://www.pm.gc.ca/eng/ministers>.

frequently rotated, owing, in Titley's view, to the department's "relative unimportance" at that time.²⁸ If Harper felt the same way, his short-sightedness has cost Canada dearly.

In 2012/2013 the *Idle No More* movement brought Indigenous activism to the forefront of Canadians' conscious once again. The grassroots effort originated in response to Harper's introduction of Bill C-45. Titled the *Jobs and Growth Act*, the bill significantly changed previous acts, including amending the *Indian Act* to modify the voting and approval procedures regarding proposed land designations. The bill also amended environmental regulations outlined in the *Fisheries Act*, *Canadian Environmental Protection Act* and the *Navigable Waters Protection Act* affecting water and fish and wildlife.²⁹ Some saw the bill as sacrificing Indigenous rights for the sake of the nation-state's economic gains. *Idle No More* became a movement for Indigenous rights in general, including treaty rights. Persistent, vehement activism moved the Government of Canada's newly appointed minister of AANDC to sit down with the LCAC, resulting in Parliament's repeated promise to facilitate cooperation between the Crown and Indigenous Peoples.³⁰

Since the 1970s, as Indigenous Peoples gained familiarity with the nation-state system, they increasingly used it to their advantage. By taking part in the judicial and parliamentary systems, Indigenous groups and individuals made their voices heard and effectively defended their rights. Meanwhile, the Crown has relied on the legislative process to subvert Indigenous rights. The Government of Canada under Harper sought to change the laws to stifle Indigenous voices in the courts, with Bill C-45 followed by Bill C-51, the *Anti-Terrorism Act* in 2015, even after the AANDC had promised a more cooperative stance. The *Anti-Terrorism Act*, which was

²⁸ Titley, *The Indian Commissioners*, 2.

²⁹ Department of Justice, "Jobs and Growth Act," Government of Canada (Ottawa: Government of Canada, 2019), https://laws.justice.gc.ca/eng/AnnualStatutes/2012_31/.

³⁰ Fenge, "Negotiation and Implementation of Modern Treaties," 134.

passed on May 6 2015, prohibits any action perceived to undermine “the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada,” including “Interference with the capability of the Government of Canada in relation to the... economic or financial stability of Canada.”³¹ The act can therefore label as terrorists Indigenous activists protesting the violation of their Indigenous Title in the face of development on their unceded territory. The Harper Conservative Government’s economic development and job growth agenda saw promise in oil and gas development, including in Harper’s home province of Alberta. One specific project was a pipeline from the coast to the tar sands, through unceded territory in northern British Columbia.³² This proposal has created conflict between some Indigenous communities and the Government of Canada that has escalated under the new Liberal Government of Justin Trudeau.

Liberal Government – Justin Trudeau (2015-present)

Public opinion in Canada regarding Indigenous Peoples has shifted greatly due to the growing awareness of Indigenous rights and concerns. Events like the *Truth and Reconciliation Commission*,³³ the *Missing and Murdered Indigenous Women Commission*,³⁴ and *Idle No More*

³¹ Bill C-51, *An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts*, 2nd sess., 41st Parliament, 2015 https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/41C51E.

³² James M. Flaherty, “The Road to Balance: Creating Jobs and Opportunities” (Ottawa, 2014.), 26, https://www.canada.ca/content/dam/canada/news/migration/web/Dha.do-fileName-3688_20160531091639_en_speech-discours-e.pdf.

³³ Crown-Indigenous Relations and Northern Affairs, “Truth and Reconciliation Commission of Canada,” 2019, <https://www.rcaanc-cimac.gc.ca/eng/1450124405592/1529106060525>. Under the Indian Residential School Agreement Act, Indigenous Canadians were invited to share stories and experiences about how they were directly or indirectly affected by the residential school system. This forum ran between 2007 and 2015, travelling across Canada to create a historical record of what had happened; it made 91 recommendations for the Government of Canada to facilitate reconciliation.

³⁴ National Inquiry into Missing and Murdered Indigenous Women and Girls, “Our Women and Our Girls Are Sacred,” 2019, <http://www.mmiwg-ffada.ca/>. “The Commissioners’ mandate is to gather evidence, and to examine and report on the systemic causes of all forms of violence against Indigenous women and girls and 2SLGBTQQIA individuals in Canada by looking at patterns and underlying factors” and to “expose hard truths about the

protests put historical and current Indigenous concerns at the forefront of Canadian consciousness. Settler society has faced deep moral questions about how their government should proceed in Crown-Indigenous relations. Following Confederation, mainstream society deemed it ethically sound to promote the aggressive assimilation of First Nations, Métis, and Inuit through agricultural projects, residential schooling, forced relocation and enfranchisement. In the past half century, however, as Indigenous voices have been heard and the trauma these policies caused has been recognized, public perceptions of justice and morality regarding Indigenous Peoples and Indigenous rights have evolved. Paternalistic policies have lost favour, and growing activism and Indigenous involvement in policy making have made it clear that Indigenous communities have their own visions as to what would benefit their growing populations. The campaign promises of the New Democratic Party and the Liberal Party in 2015 reflected this shift, as does Justin Trudeau's Liberal Government, which holds a majority in the House of Commons.

Since taking office, Justin Trudeau has made many promises to facilitate better Indigenous-Crown relations. These have included creating a new nation-to-nation process, improving First Nations education, bettering Métis quality of life, launching a national public inquiry into the missing and murdered women and girls in Canada, enacting the *Truth and Reconciliation Commission*'s recommendations, and even repealing the problematic elements of Bill C-51 (including restrictions on Canadians' lawful participation in protests and advocacy).³⁵ Today, many Indigenous communities face higher mental and physical health concerns, less

devastating impacts of colonization, racism and sexism—aspects of Canadian society that many Canadians are reluctant to accept.”

³⁵ Liberal Party of Canada, “Real Change,” 2015, <https://www.liberal.ca/realchange/>.

educational funding, and higher poverty rates than the rest of Canada.³⁶ On taking office, Trudeau reiterated his promise to raise the quality of water and sewage facilities on remote reserves to meet the standards of other Canadian communities.³⁷ Initially, the government-promised changes seemed to be coming to fruition. A national inquiry travelled across Canada seeking stories of missing and murdered women and girls and exposing the lack of attention these cases had received in comparison to non-Indigenous cases. AANDC once again was renamed, and it was also split into the department of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and the department of Indigenous Services, to “modernize Government of Canada structures to enable Indigenous peoples to build capacity and support their vision of self-determination.”³⁸ In 2018, the Trudeau Government announced plans to formulate a *Recognition and Implementation of Rights Framework* in full partnership with Indigenous Peoples. For the first two years, Trudeau held great promise of advancing Indigenous rights in Canada. More recent developments have been less reassuring.

Pipeline protests in northern British Columbia became national news once again in winter 2018/2019. A group of Unist'ot'en First Nations in northern British Columbia have determined that the proposed pipeline is unwelcome in their unceded Wet'suwet'en homelands. This group of Unist'ot'en and Indigenous rights activists have protested for years to prevent encroachment by oil and gas companies. In the summer of 2018, construction on the pipeline was halted due to a Federal Court of Appeal's ruling that the Government of Canada failed in its duty of the Crown

³⁶ Trina Roache, “Top 5 Indigenous Issues All Canadians Should Care About,” *APTN News*, October 17, 2015, <https://aptnnews.ca/2015/10/17/top-5-indigenous-issues-all-canadians-should-care-about/>.

³⁷ Rachel Aillo, “Can PM Trudeau Keep Drinkable Water Promise to First Nations?,” *CTV News*, December 28, 2017, <https://www.ctvnews.ca/politics/can-pm-trudeau-keep-drinkable-water-promise-to-first-nations-1.3736954>.

³⁸ Crown-Indigenous Relations and Northern Affairs, “Crown-Indigenous Relations and Northern Affairs Canada,” Government of Canada, 2019, <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs.html>.

to consult. Due to continued uncertainty, Kinder-Morgan sold the pipeline to the federal government for \$4.5 billion,³⁹ another great cost of strained Indigenous-Crown relations.

In 2018, Coastal GasLink, a subsidiary of TransCanada Corporation, filed an injunction to gain access to Wet'suwet'en lands to begin construction. In December 2018, the court granted the injunction and the company prepared for initial construction. When the Unist'ot'en and other activists blocked commencement of construction, the Royal Canadian Mounted Police arrived and made several arrests to clear a path for work on the pipeline to continue. TransCanada stated that it had signed agreements already with the chief and council of the First Nations that would be affected by the pipeline. The protesting Unist'ot'en, however, say that for the most part their hereditary chiefs were not consulted and that the chief and council who signed were elected by the community, but lacked legitimacy, owing to the history of these elected chiefs and councils. The election of chief and council dates back to Indigenous policies from the aggressive assimilation days of the Government of Canada, when this democratic form of government was enforced on a number of Indigenous communities. In some communities the traditional governments, or hereditary chiefs in this case, have continued to challenge the authority of elected councils and chiefs.⁴⁰ It is a tumultuous time for Indigenous peoples as they pursue self-determination while formulating their own means of balancing their traditions, the environment, and economic development.

As Justin Trudeau made his way across Canada during the controversy, to speak in townhall meetings, Canadian citizens repeatedly raised the topic of the northern British

³⁹ CBC News, "Timeline: Key Events in the History of the Trans Mountain Pipeline," *CBC News*, October 3, 2018, <https://www.cbc.ca/news/canada/calgary/timeline-key-dates-history-trans-mountain-pipeline-1.4849370>.

⁴⁰ Chantelle Bellrichard, "RCMP, Wet'suwet'en Reach Tentative Deal to Let Gas Company Workers Through," *CBC News*, January 9, 2019, <https://www.cbc.ca/news/indigenous/unistoten-coastal-gaslink-rcmp-injunction-1.4971860>.

Columbia pipeline. Some accused the Prime Minister of not caring about the economic welfare of Canada, as evidenced by his lack of support for the development of the Alberta tar sands. Others accused the Liberal Government of continuing colonial policies. In response to one such question, Justin Trudeau stated: “Canada has a long and terrible history in regard to Indigenous Peoples. We have consistently failed as a country to live up to the original spirit and intent of the treaties.”⁴¹ His actions regarding the northern British Columbia pipeline produced an image of a Prime Minister concerned with fostering a renewed Indigenous-Crown relationship, but more fundamentally his statement reflects how far Canada has come to elect a government that readily acknowledges the strained Indigenous-Crown relations in our nation. It has taken the perseverance of Indigenous activists to maintain this course. Thanks to their efforts, Canadian governments are now constitutionally obligated to implement Indigenous treaty rights. As precedents continue to be set in court cases that uphold section 35, the Canadian public is recognizing this commitment and the need to encourage cooperation between Indigenous governments and governments of Canada, for the betterment of all Canadians.

⁴¹ CTV News, *Justin Trudeau Holds Town Hall in Kamloops, B.C. amid Pipeline Dispute* (Canada: CTV News, 2019), https://www.youtube.com/watch?v=B_nl9CUd75E. 41:18.

CHAPTER FOUR: HISTORY OF INDIGENOUS-CROWN RELATIONS IN YUKON TO THE MODERN LAND CLAIMS ERA

The Yukon remained under the unmapped portion of what was called the North-Western Territory before the Hudson Bay Company (HBC) sold the land to Canada. Employees of the HBC were the first non-Indigenous individuals to explore the coasts and later slowly move further inland. They found well developed societies, with diverse cultures and languages, and peoples using European trade goods that had travelled along the well-established Indigenous trade networks.¹ The HBC set up posts in the interior Yukon to facilitate trade, even going as far as Fort Yukon, Alaska.² Independent traders and missionaries followed in their wake and remained after the HBC left. The Klondike Gold Rush brought non-Indigenous migrants to the region in unprecedented numbers, who left enduring impacts on the landscape and the Yukon Indigenous Peoples.³ At this time, the Government of Canada practiced social segregation with Yukon Indigenous Peoples, a unique practice within the country that by the late 1800s was implementing the aggressive assimilationist policies of the Indian Act. Residential schooling began in the Yukon in the early 1900s administered by the Anglican Church, whose persistent petitioning for greater federal funding resulted in the Choooutla Indian School in 1911.⁴

Over time, the social segregation policy eroded as interaction between Indigenous and non-Indigenous peoples increased. *The Yukon Territory Act* of 1898 initiated the devolution process that allowed greater territorial government control over the coming years. Renewed interest in the territory beginning with WWII furthered this process. With the construction of infrastructure in conjunction with the Alaska Highway and the Klondike Highway, and the

¹ Cruikshank, *Reading Voices: Oral and Written Interpretations of the Yukon's Past*.

² Coates, *Canada's Colonies: A History of the Yukon and Northwest Territories*.

³ Chris Clarke and K'anacha Group, *Tr'ehuhch'in Nawtr'udaha: Finding Our Way Home*, ed. Chris Clarke, K'anacha Group, and Sharon Moore (Dawson City: Tr'ondëk Hwech'in, 2009).

⁴ Clarke and K'anacha Group, *Tr'ehuhch'in Nawtr'udaha*, 22.

growth of settlements and resource development, the territorial government achieved greater control.⁵ By the 1950s, both federal and territorial Department of Indian Affairs officials were increasing their presence in Indigenous communities in the Yukon, as evidenced by enforcement of trapping laws⁶ and provision of social assistance.⁷

Throughout this time, the Government of Canada avoided a land claim for most of the territory. In the 1960s, with the rise of Indigenous Rights in Canada and the vociferous backlash toward the *White Paper, 1969*, Yukon Indigenous Peoples created political organizations to assert their rights on their traditional territories. *Together Today for Our Children Tomorrow* began the treaty negotiating process that led to twenty years of negotiations between the Government of Canada, Yukon First Nations (YFN), and later the Government of Yukon. The *Umbrella Final Agreement* signed in 1993, created a framework for individual land claims and ended the Indian Act's jurisdiction in the territory. Advances in Indigenous rights in Canada and changes in land claim policies between 1973 and 1993 led to the YFNs signing a treaty that has allowed greater recognition of their self-determination rights over lands and resources. The Umbrella Final Agreement stands out as a monumental land claim that has proven successful in protecting the traditional territories and cultures of Yukon Indigenous Peoples, as can be seen through the *Peel Watershed* case of 2017.

⁵ Julie Cruikshank, "The Gravel Magnet: Some Social Impacts of the Alaska Highway on Yukon Indians," in *The Alaska Highway: Papers of the 40th Anniversary Symposium*, ed. Kenneth Coates (Canada: University of British Columbia Press, 1985), 172–87.

⁶ Catherine McClellan et al., *A History of the Yukon Indians: Part of Our Land, Part of Our Water* (Vancouver: Douglas & McIntyre, 1987), 91.

⁷ Kenneth Coates, "Best Left As Indians: The Federal Government and the Indians of the Yukon, 1894 to 1950," *The Canadian Journal of Native Studies* 2, no. 4 (1984): 193.

Pre-Contact

Contact between non-Indigenous and Indigenous Peoples occurred later in the Yukon than in other regions in Canada, due to its remote location and largely landlocked borders in the northwest corner of the country. To the west lies Alaska, to the east the Northwest Territories, and to the south the Province of British Columbia. The northern boundary is approximately 150 km of coastline on the Beaufort Sea.

The establishment and enforcement of borders and other colonial measures did not begin to impact Indigenous Peoples of the Yukon until the mid-1800s. Before that, Indigenous communities consisted of families who followed a matrilineal moiety system. Moieties south of Fort Selkirk were mostly either the crow or the wolf. North of that, Yukon Indigenous Peoples identified under three different moieties of which no one living today has concrete knowledge of how they operated.⁸ On the coast, the Tlingit communities were larger and had permanent settlements due to the abundant resources from the sea. Farther inland, communities thinned out and migrated in seasonal rounds to harvest the resources. Both the wildlife and the peoples who relied on them ignored the border that divided the Yukon and Alaska.

People were free to come and go from communities as they pleased, depending on food resources or group dynamics. Prior to European settlement, the Yukon Indigenous population was estimated to be between seven thousand and nine thousand.⁹ Agreements existed between families on designated hunting areas, but the boundaries of such areas were relatively fluid, demarcated by watersheds and mountains. Use of areas came with the responsibility of stewardship and selling the land for profit was unheard of. Lands sometimes transferred from the control of one group to that of another to settle a quarrel or as a display of honour to another

⁸ McClellan et al., *A History of the Yukon Indians*, 189.

⁹ Kenneth Coates, "Best Left As Indians," 9.

family.¹⁰ When kinship and reciprocity were established between two parties, an individual could be adopted into another community or hunting grounds could be shared by families. Groups partook in large gatherings infrequently to avoid straining resources. But such gatherings remained important because they allowed for trade, general socializing, and marriages. Because family groups were closely related or from the same moiety – and it is taboo to marry within one’s own moiety – Indigenous individuals would have to travel to find potential spouses. Get-togethers would usually take place at fish camps in the summer or near lakes with large stocks of fish in the winter. Travel usually took place in the warmer seasons, when most of the region had thawed and resources were more abundant. During the colder seasons, isolation and lack of mobility led to the development of a myriad of languages specific to family groups who communicated in their own unique blends of vocabulary.¹¹

Many Indigenous individuals became multi-lingual as inter-marriages between family communities took place, and to facilitate communication during the large seasonal gatherings. Anthropologist Dominique Legros describes this inter-family relationship as a “tapestry,” within which family groups are “pieces of fabric woven over millennia” that if cut out would fray, demonstrating “how the periphery, which seemed to be one with the center, depended on the threads to attach it to the rest of the fabric.”¹² In other words, these communities were unique but held strong connections with one another through kinship and trade. As Paul Nadasdy explains, it is difficult to understand these societies within the nation-state framework that YFNs are

¹⁰ McClellan et al., *A History of the Yukon Indians*, 184.

¹¹ Cruikshank, *Reading Voices*, 63, 65, 71. McClellan et al., *A History of the Yukon Indians*, 8.

¹² Paul Nadasdy, *Sovereignty’s Entailments: First Nation State Formation in the Yukon* (Toronto: University of Toronto Press, 2017), 204.

currently divided into.¹³ The first European explorers in the Yukon encountered the societal composition that Legros describes.

Early Fur Trade in the Yukon (1800 to 1893)

In the early 1800s the area now known as the Yukon Territory was a small portion of the North-Western Territory. King Charles II's Royal Charter of 1670 had given the Hudson Bay Company (HBC) jurisdiction over the region called Rupert's Land which comprised the Hudson Bay's drainage system. According to the charter, the HBC was to use the North-Western Territory to complete the Northwest Passage and also "for the finding some Trade for Furs, Minerals and other considerable Commodities." King Charles clarified that should anything of worth be found, further exploration should ensue to "arise very great advantage to us and our Kingdom."¹⁴ The HBC began funding Arctic exploration in 1821,¹⁵ but delayed venturing into the Yukon in the early 1800s, to leave the region as a buffer zone between themselves and the Russians, who had sovereignty over Alaska.¹⁶

Complex trade networks allowed European goods to enter inland long before a non-Indigenous person set foot west of the Mackenzie Mountains. Coastal Tlingit in the south, Inuit in the north, and the Indigenous peoples closest to the present Northwest Territories (NWT) borders first traded directly with English, Russian, and Americans. Many of these peripheral Indigenous groups found profit as intermediaries, gathering furs from Indigenous communities in the interior and trading them for European goods that they would then bring inland for sizeable profits. Goods like glass beads, tobacco, and iron knives made their way inland on trade routes in

¹³ Nadasdy, *Sovereignty's Entailments*, 103.

¹⁴ Sean Barrett and Charles Franks, "HBC Heritage — Text of HBC's Royal Charter," Hudson Bay Company History Foundation, 2016, <http://www.hbcheritage.ca/things/artifacts/the-charter-and-text>.

¹⁵ Coates, "Best Left As Indians," 9.

¹⁶ Cruikshank, *Reading Voices*, 83.

the late 1700s, long before European traders were present.¹⁷ The coastal communities guarded their position and delayed the HBC from establishing forts in the interior by advising company workers that the journey was long and arduous.¹⁸ The lure of profitable furs nevertheless pulled traders inland by the mid-1800s to establish posts along rivers that greatly facilitated their engagement in the fur trade.

In the north, John Bell made his way from Fort McPherson (then known as the Peel River Post in 1840), over the Richardson Mountains to explore the river systems, establishing Lapierre House at the confluence of the Bell and Peel rivers in 1846.¹⁹ Bell had reached the Porcupine River in 1842, which another HBC trader, Alexander H. Murray, later used to make his way farther inland to the Yukon River. Murray then established Fort Yukon in 1847, a little over three kilometers up the Yukon River from its junction with the Porcupine River, well within Russian territory. Lapierre House became a transfer house between Fort Yukon and Fort McPherson in a profitable fur trade between the HBC and inland Indigenous Peoples.²⁰ In effect, these inland establishments cut the coastal communities out as middlemen in the fur trade and caused tension between these Indigenous groups and some HBC officials.

The Indigenous Peoples who visited the posts knew of the rivalry between the HBC and the Russian American Company and would garner higher prices for their furs from HBS traders by claiming demand for the furs from the Russian American Company.²¹ Russian fur traders eventually began to encroach on the HBC's lucrative site in the 1860s. But it was not until 1867, when Alaska was sold to the United States, that the HBC felt any real threat. In 1869, the United

¹⁷ McClellan et al., *A History of the Yukon Indians*, 63.

¹⁸ McClellan et al., *A History of the Yukon Indians*, 64.; Coates, *A Northern Yukon: A History* (Victoria: Parks Canada, 1979). 14.

¹⁹ Coates, *A Northern Yukon*, 20. The trade post was later moved further up Bell River in 1851.

²⁰ Government of Yukon, "Porcupine River - LaPierre House," Sights and Sites of Yukon, 2019, <https://sightsandsites.ca/rivers/site/lapierre-house>.

²¹ Coates, *A Northern Yukon*, 28.

States Navy forced the HBC to abandon Fort Yukon, which lay on their newly acquired soil. The HBC was not able to re-establish its position in the northern Yukon fur trade, as the Indigenous Peoples of the region began trading with the Americans in the west, and Inuit from the Arctic coast started trading with whalers and independent traders.²²

In the south, the HBC began exploring up the Liard River in 1831. John McLeod made his way north of what is now Watson Lake to trade with Indigenous communities there. It was not until 1842 that Robert Campbell began exploring farther inland and mapping out potential trading post locations. In 1848, Campbell established Fort Selkirk on the Yukon River, closer to the mouth of the Pelly River, south of Fort Yukon. For the most part, Campbell enjoyed amicable relations with Yukon Indigenous Peoples, as reflected in his diaries.²³ The profitability of his trading post depended on the cooperation of locals, after all, along with their knowledge of the land, which Campbell relied on to find a lucrative site for a fort. In accordance with HBC policy, Campbell did not directly interfere with Indigenous cultural practices²⁴ and would often share gifts of tobacco with locals. This is not to say that Campbell's presence did not have a cultural impact. His practice of trading with any Indigenous person who arrived at his trading post violated traditional Indigenous protocols.²⁵ Though these small displays of reciprocity illustrate Campbell's encouragement of cooperation, some of his actions serve to remind that his main goal was to gain profits for the HBC. When establishing Fort Selkirk, Campbell was well aware of the Chilkat Tlingit's profitable trade in the area, yet he built the fort there knowing he

²² Coates, *A Northern Yukon*, 28.

²³ McClellan et al., *A History of the Yukon Indians*, 67.

²⁴ Cruikshank, *Reading Voices*, 83.

²⁵ McClellan et al., *A History of the Yukon Indian*, 236. One such practice was respecting one's main trade partner by initiating trade with them first before seeking another to trade with.

would interrupt the Chilkat monopoly. The inland Indigenous Peoples had a long-established relationship with the Tlingit, including marriages that facilitated trade between the two groups.²⁶

HBC officials knew of the inland Indigenous Peoples' preference to trade with the Tlingit,²⁷ and had no means of restricting that trade, as they were greatly outnumbered. Therefore, the trade at Fort Selkirk was never strong. In 1852, just four years after its establishment, the Chilkat Tlingit raided Fort Selkirk and forced HBC officials to abandon the site. Even though the local Indigenous population regularly traded with the HBC, they did not come to the defence of the HBC traders, perhaps, as Victoria Castillo writes, owing to concerns for self-preservation, or perhaps they were not fully aware of the situation.²⁸ The history of Fort Selkirk nevertheless illustrates the HBC's reliance on the cooperation of Indigenous Peoples when establishing a lucrative trade site and the consequences when European traders were unable to achieve such cooperation.

The HBC's sale of the North-Western Territory to Canada in 1870 did not initiate immediate change in the region, except its renaming as the Northwest Territories (NWT). As trade grew less profitable, the HBC lost interest in maintaining its Yukon trading posts. By 1893 the HBC left altogether as the company began diversifying with land development.²⁹ The fur trade continued after the HBC withdrew, as independent traders, long present in the region, inhabited vacated forts. Like the HBC, these traders recognized the benefits of cooperation with Indigenous Peoples and readily engaged in the local communities. Unlike the HBC officials, they were not bound to company policies discouraging marriage between company officials and

²⁶ McClellan et al. *A History of the Yukon Indians*, 236.

²⁷ Victoria E. Castillo, "Fort Selkirk: Early Contact Period Interaction Between the Northern Tutchone and the Hudson's Bay Company in Yukon" (University of Alberta, 2012).94.

²⁸ Castillo, "Fort Selkirk," 111.

²⁹ Coates, *A Northern Yukon*, 28.

Indigenous women.³⁰ For example, Dan Cadzow, a successful independent trader who took over the old HBC post of Rampart House,³¹ had a positive reputation among the First Nations and married an Indigenous woman.³² Missionaries had also arrived at inland posts by this time. Because HBC officials were mostly British and Anglican, the Catholic Church struggled to establish itself in the region.³³ Scientists and land surveyors also began to make their way inland and many of the geological features and non-Indigenous settlements of the region were named after them on western maps. For instance, the Ogilvie Mountains were named for the surveyor and Commissioner of the Yukon from 1898 to 1901, William Ogilvie. In 1883, the U.S. Army explorer Lt. Frederick Schwatka gave the name Lake Labaerge to a lake that Chief Kohklux and his wives named Kluk-tak-sy'-ee on a map they drew for George Davidson, a scientist with the U.S. Coast and Geodetic Survey.³⁴ By the close of the nineteenth century, prospectors outnumbered these early explorers, traders, and missionaries when gold discoveries initiated the second wave of non-Indigenous migration into the region.

Northwestward Expansion (1893 to 1910s)

At the turn of the twentieth century, thousands of non-Indigenous gold seekers arrived, impacting the environment and the peoples of the Yukon significantly. Gold seeking had started slowly, with HBC employees and missionaries noting activity around Fort Yukon in the 1860s. When word reached the “Outside,” miners slowly began to find their way inland. The Tlingit,

³⁰ Coates, *Canada's Colonies*, 57.

³¹ Government of Yukon, “Porcupine River - Rampart House,” Sights and Sites of Yukon, 2019, <https://sightsandsites.ca/rivers/site/rampart-house>. This post was established between 1890 and 1893 to replace Fort Yukon. It resides on the Porcupine River at the Alaskan/Yukon border.

³² Coates, “Best Left As Indians,” 30.

³³ Coates, *A Northern Yukon*, 31-33.

³⁴ Yukon Historical and Museums Association, “The Kohklux Map” (Whitehorse, 1995), <https://www.heritageyukon.ca/sites/default/files/TheKohluxMap.pdf>. This document recounts the history of a map that had been drawn by Tlingit chief, Chief Kohlux, and his wives. The map was drawn for George Davidson, a visiting scientist who was in the area in the late 1800s and early 1900s. The names used on the map are those that the chief and his community were familiar with. These names have since Anglicized.

protective of their monopoly on the interior fur trade, guarded the Chilkoot Pass through the mountains in the south, only letting a limited number of prospectors through. In 1886, gold was discovered at Forty Mile, a small settlement close to the Yukon-Alaska border. Over the next few years, Forty Mile gained a store, school, church and a North West Mounted Police (NWMP) detachment of twenty men.³⁵ In 1896 when gold was found on Bonanza Creek by Shaaw Tlaa (Kate Carmacks), her husband, George Carmacks, her brother Keish (Skookum Jim), and Dawson Charlie,³⁶ the Klondike Gold Rush commenced.

As news of the major gold strike reached the outside world, the port of Skagway, Alaska on the Pacific coast filled with overcrowded steamships from the south. Drove of people hastening to reach Dawson, the town established at the site of the gold discovery, set off north, either through the White Pass, or from nearby Dyea through the Chilkoot Pass. The Tlingit were no longer able to control or monitor the influx of non-Indigenous migrants inland and their monopoly ended. Large lines of hikers made their way over the mountains, carrying their provisions. Their journeys were long and arduous, leaving scars on the land in their wake. Debris of abandoned goods began to pile up, and forests became denuded as prospectors chopped trees to build boats and rafts to traverse the river systems. The Yukon and White Pass Railroad, begun in 1898 and completed in 1900, after the rush had subsided also changed the landscape.³⁷

³⁵ McClellan et al., *A History of the Yukon Indians*, 84.

³⁶ Cruikshank, *Reading Voices*, 124.

³⁷ Coates and William R. Morrison, *Land of the Midnight Sun: A History of the Yukon*, 3rd ed. (Montreal: McGill-Queen's University Press, 2017). 117.

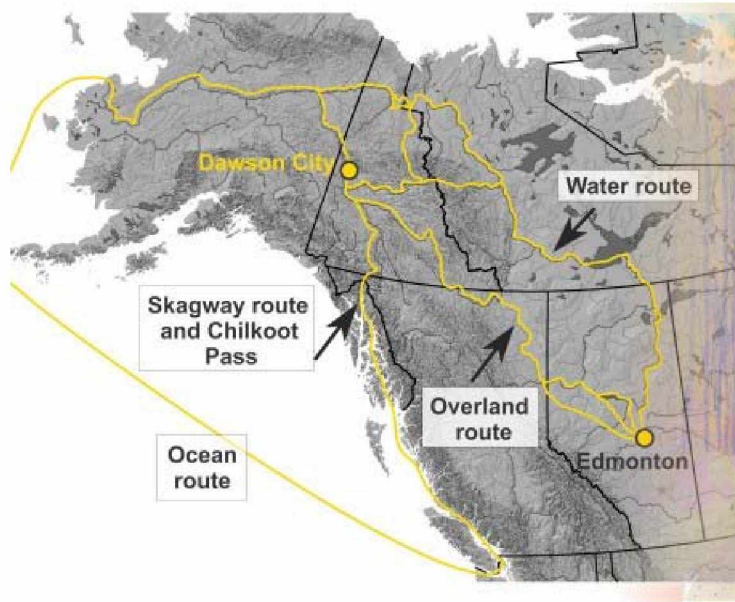


Figure 4: This map displays the routes Klondike gold miners used when making their way to Dawson City. Notice the route from Edmonton, Canada.³⁸

Edmonton, Alberta also became a major staging point for travelers to the Klondike. Prospectors would head north from Edmonton to access the river systems that joined with the Yukon River. While gold seekers instigated Treaty Eight negotiations that covered vast regions of Alberta, British Columbia and the Northwest Territories, their travel to the interior

of the Yukon did not result in treaty negotiations with Yukon Indigenous Peoples, although their presence greatly affected traditional Indigenous territories.³⁹

As noted above, Clifford Sifton, Minister of the Department of the Interior from 1896 to 1905, did not view the Yukon Indigenous Peoples as having Indigenous title.⁴⁰ Debate continues surrounding the Government of Canada's support of Sifton's alternate view that left the Yukon out of the Numbered Treaties.⁴¹ Historians Ken Coates and William Morrison suggest that the Crown did not want to lose lands with potential for mineral development, and it did not view the small, nomadic Indigenous groups of the region as a threat to its sovereignty.⁴² In a separate article, Coates also states that the volatile conditions of the Gold Rush were not expected to

³⁸ Michael Donnelly, "The Lure of Gold in Alberta's History: Part II," RETROActive - Exploring Alberta's Past, 2015, <https://albertahistoricplaces.wordpress.com/2018/11/29/the-lure-of-gold-in-albertas-history-part-ii/>.

³⁹ McClellan et al., *A History of the Yukon Indians*, 116. An example being of a group of Han Indigenous Peoples who told the Government of Canada that miners were killing their dogs.

⁴⁰ Kerry M. Abel, *Drum Songs*, 168.

⁴¹ Rene Fumoleau, *As Long as This Land Shall Last*, 40.

⁴² Coates and Morrison, "More Than a Matter of Blood: The Federal Government, the Churches and the Mixed Blood Populations of the Yukon and the Mackenzie River Valley, 1890-1950," in *1885 and After: Native Society in Transition*, ed. F. Laurie Barron and James B. Waldram (Regina: Canadian Plains Research Center, 1986), 267.

endure; the influx of people would soon disperse, making negotiations unnecessary.⁴³

Furthermore, the Department of Indian Affairs as a branch of the Department of the Interior did not push development in the Yukon, as investments in the south were seen as more profitable.⁴⁴

Omission from the Numbered Treaties did have benefits for the Yukon Indigenous Peoples: the Indian Act's aggressive assimilation policies were loosely implemented in the Yukon compared to elsewhere in Canada. The policy inertia owed to the territory's unique circumstances of unstable development and remote location, both of which contributed to a transient non-Indigenous population. These economic and social conditions, in addition to the harsh climate and landscape, made the region unsuitable for agriculture programs or land sales that were being promoted by the Government of Canada in the south. Yukon Indigenous individuals were also difficult to regulate with inadequate infrastructure in the region, and therefore government regulation remained light and irregular. At this time, Indigenous communities relied on hunting, fishing, and trapping as they had done before the Gold Rush, unlike the southern Indigenous populations that had experienced extreme depletion of subsistence resources and settler infringement on their lands and resources. The increase in settler society also provided mixed economic opportunities, where Yukon Indigenous Peoples worked, for instance, as pack carriers up the Chilkoot Pass, wood cutters on the steam ships, or selling wild game to the miners. At this time, instead of government officials trying to integrate Yukon Indigenous Peoples into settler society, they resorted to social segregation, as Coates explains.⁴⁵

⁴³ Coates, "Best Left as Indians," 181.

⁴⁴ Coates, *Canada's Colonies*, 74.

⁴⁵ Coates, "Best Left as Indians," 184.

Though the Government of Canada avoided treaty negotiations and strict adherence to the Indian Act, it did send officials to maintain order and control of the region in the face of the chaos caused by the Klondike fever. In 1894, the Government of Canada sent Inspector Charles Constantine to assert authority and administer justice. As anthropologist Julie Cruikshank notes, Constantine's diaries reflect concern for miners' well-being that overshadowed the struggles of Yukon Indigenous Peoples.⁴⁶ He focused on enforcing Canadian law to counteract the American frontier administration that had arisen in its absence. Constantine achieved this aim, and Ottawa reinforced the NWMP's authority by raising the number of NWMP troops from 95 in 1897 to 196 in 1898.⁴⁷ The NWMP became a noteworthy feature in these mining settlements and assumed many responsibilities outside of policing relating to education, health, wild-life management, social services, and business and mining affairs.⁴⁸

Inspector Constantine did not ignore Indigenous Peoples completely, as can be seen by his support of Bishop Bompas' petition to Ottawa asking for a reserve to be established near Dawson City. Prior to the Gold Rush, the Tr'ondëk Hwëch'in, meaning "the people who live at the mouth of the Tr'ondëk (Klondike River)," had a settlement they called Tr'ondëk, where Klondike City, later Lousetown, would be built. This area is a few kilometers upriver from Dawson City, which was once fertile moose hunting grounds. As the area became flooded with prospectors, the Tr'ondëk Hwëch'in were pushed aside and witnessed the degradation of their traditional territory. To escape, the Tr'ondëk Hwëch'in's Chief Isaac, relocated his community 4.5 km downriver from the growing mining cities. In 1896, Moosehide was designated a reserve by the Government of Canada. Both the Government of Canada, which wanted to avoid treaty

⁴⁶ Cruikshank, *Reading Voices*, 116.

⁴⁷ Morrison, *Showing the Flag: The Mounted Police and Canadian Sovereignty in the North, 1894-1925* (Vancouver: University of British Columbia Press, 1985), 30.

⁴⁸ Coates, *A Northern Yukon*, 82.

negotiations, and the Anglican Church strongly supported an Indigenous reserve in the region as a means to segregate Indigenous Peoples from the settler-society.⁴⁹ Bishop William Bompas and the Anglican Church viewed the miners' society as immoral and exploitative of the nearby Indigenous communities. When the Bishop petitioned to further expand the reserve, William Ogilvie, Commissioner of the Yukon, responded that potential gold strikes made the lands too valuable, and expansion would have to wait until the proposed region was proven to be unprofitable.⁵⁰ The government's expansionist aims, thus overrode the Bishop's concerns for the Indigenous People's well-being. The government simply did not view a larger reserve as advantageous.

Over the course of the Gold Rush, miners and government officials perceived the Yukon Indigenous Peoples as peripheral to settler-society. Intermittently, miners relied on Indigenous individuals for meat and furs, for labour, or for help in running the steamships. Mostly, however, Indigenous Peoples preferred to avoid the chaos of the Klondike Gold Rush. This passively aligned well with the social segregation enacted through missionaries, police "protection," and racist views of the time that kept them on the periphery.⁵¹ Besides communities like Moosehide, Yukon Indigenous Peoples lived outside of government control for much longer than in other areas in Canada.

At the Klondike Gold Rush's height in 1898, over thirty thousand people were in the Dawson City area.⁵² That year, the Government of Canada responded with *The Yukon Territory Act* that designated the Yukon as a "separate geographical and political entity" in Canada.⁵³

⁴⁹ Clarke and K'anacha Group, *Tr'ehuhch'in Nawtr'udaha: Finding Our Way Home*. 10-11. The Tr'ondëk Hwëch'in are a Han-speaking people and would be considered part of the Han People on linguistic maps.

⁵⁰ Coates, "Best Left As Indians," 184.

⁵¹ Coates, *Canada's Colonies*, 83.

⁵² Government of Yukon, "The Klondike Gold Rush: Journey's End," Yukon Archives, 2009, <http://tc.gov.yk.ca/archives/klondike/en/journey.html>.

⁵³ Government of Yukon, "Yukon Today," 2017, <http://www.gov.yk.ca/aboutyukon/yukontoday.html>.

Though Ottawa had deemed infrastructural development in the Yukon unnecessary, it recognized a need for a limited government for the growing populace. William Ogilvie was appointed as Commissioner, not a Lieutenant Governor which would have wielded more authority, thereby leaving greater federal control of the territory. This caused resentment amongst the settlers in the Yukon who felt that Ottawa was not knowledgeable of the north and would only act in the best interest of the south.⁵⁴ Overtime, the Government of Canada devolved control to the territory, even as the population decreased as the Klondike Gold Rush waned. In 1902, a seat in the House of Commons was awarded to the Yukon and by 1909 the Yukon Territory had a fully elected legislature. By 1911, the population of Dawson City was 9,142⁵⁵ and it dropped again the following year to 2,500.⁵⁶

Shortly after the *Yukon Territory Act* had been finalized, an Indigenous individual confronted the Government of Canada with the first land claim in the territory. Instead of waiting for the government to approach him, hereditary Chief Jim Boss, at the behest of his people, approached the Crown in similar fashion to the early land claims of the Nsiga'a First Nation of British Columbia. He filed the first land claims in the Yukon in 1900 and 1902. He first petitioned Commissioner Ogilvie to have 1,600 acres set aside for reserve lands. The Commissioner granted him 320 acres. Not satisfied with this outcome, he sent another letter to Clifford Sifton. This time he enlisted the aid of a Whitehorse lawyer, who helped him write a message that outlined the current difficulties his people were facing due to encroaching settlers.⁵⁷

⁵⁴ Coates, *Canada's Colonies*, 89.

⁵⁵ Surgeon General of Public Health and Marine-Hospital Services of the United States, "Public Health Reports" (Washington, 1910), https://books.google.com/books?id=DIIdIAQAAIAAJ&pg=PA584&lpg=PA584&dq=population+of+yukon+%221910%22&source=bl&ots=_ydw05VNNB&sig=ACfU3U2AJi9BAfVGQJiqBjSTAfIWyar7MA&hl=en&sa=X&ved=2ahUKEwj29v-n647hAhUJrZ4KHV51B00Q6AEwFnoECAMQAQ#v=onepage&q=population%2520of%25.

⁵⁶ Coates, *Canada's Colonies*, 98.

⁵⁷ Ta'an Kwäch'än Council, "Ta'an Kwäch'än," Assembly of First Nations Yukon Region, accessed March 29, 2019, <http://afnyukon.ca/taan-kwachan-council/>.

The letter included a list of communities and how much their populations had declined due to disease and over harvesting of subsistence resources by non-Indigenous individuals.⁵⁸ In response to Boss's second letter, the Government of Canada promised him that the NWMP would provide protection and aid, but no land was set aside.⁵⁹

Following Boss's letters, land claims in the Yukon experienced a hiatus until the late 1960s. Deputy Superintendent of Indian Affairs Hayter Reed wrote to Constantine with instructions to "not give encouragement to the idea that they, the Yukon Indians, will be received into treaty, and taken under the care of the government,"⁶⁰ and subsequent government employees received similar directions. The last part of these instructions, "and taken under the care of the government," could partially explain the government's avoidance of treaty negotiations in the Yukon during the gold rush era. The Government of Canada was currently involved in the cumbersome, expensive Numbered Treaties process, during a global recession. By leaving the Indigenous Peoples in the Yukon as is, without encouraging any formal agreements, they would live as they had, without government assistance or asserting their Indigenous Title. This policy contradicted the 'moral' obligation officials had voiced toward Indigenous Peoples in the south⁶¹ and even east of the Mackenzie Mountains in Treaty Eleven territory. Frank Oliver, Sifton's successor as Minister of the Department of the Interior, who held the position from 1905 to 1911, also strongly encouraged social segregation, which he touted as being in the best interest of Indigenous Peoples, as they would not become reliant on government assistance, or communist ideals, and instead they would benefit more by continuing their hunting

⁵⁸ Cruikshank, *Reading Voices*, 113.

⁵⁹ McClellan et al., *A History of the Yukon Indians*, 99.

⁶⁰ Cited in Coates, "Best Left As Indians," 181.

⁶¹ Titley, *The Indian Commissioners*, 203-207. Indigenous Peoples were described by government officials as inferior, and it was widely believed that only assimilation would ensure their survival. Therefore, it became the "white man's burden" to enact aggressive assimilation policies outlined in the Indian Act.

and trapping lifestyles.⁶² While one can question the federal government's motives in neglecting to fulfill its moral obligations to Yukon's Indigenous Peoples at the turn of the twentieth century, YFNs clearly have benefited from having retained the right to pursue their land claims during the Comprehensive Land Claims Era late in the century.

As the Klondike Gold Rush ended, small mining operations continued, especially in Dawson City and Mayo to the east. The Government of Canada continued its enforcement of social segregation by introducing small Indigenous reserves in the territory that were not part of treaty agreements.⁶³ Similar to Moosehide, the federal government created these reserves to separate the First Nations from the settler-society and place them on non-valuable lands. If, at a later date, the land proved to be valuable, the government would make arrangements to then relocate the reserve. In one such case, authorities relocated a reserve near Whitehorse four times due to discoveries of profitable mineral deposits. Interestingly, Acting Commissioner, John T. Lithgow suggested in 1907 that all Yukon Indigenous Peoples be relocated to the Peel-Porcupine district, an area without significant mineral discoveries.⁶⁴ Though the government did not enact Lithgow's suggestion, it repeatedly forcibly removed Indigenous Peoples in accordance with settler and government interests. For example, in 1915, authorities moved an Indigenous encampment, referred to in government documents as "squatters," near Whitehorse to two miles north, downriver from the settler community. It was, however, difficult for Indian Affairs officials to restrict Yukon Indigenous Peoples to reserves, due to lack of personnel and resources, and therefore many ignored the reserve system. In 1914, Anglican Reverend John Hawksley was appointed as the first Indian Agent in the Yukon. A year into his position, an article in the

⁶² Coates, "Best Left as Indians," 182.

⁶³ Coates, "Best Left as Indians," 186.

⁶⁴ Coates, "Best Left as Indians," 183-185.

Whitehorse Star praised him for moving “tents, houses, bags and baggage” of a group of Indigenous Peoples to a point further from town. The article stated: “Now that the Indians are gone it is hoped any further move to establish a village near town will promptly be nipped in the bud. It is better for the Indians that they should be away by themselves and it is certainly better for the town that they not be camped so close to the water supply.”⁶⁵ The Yukon’s encouragement of social segregation of its Indigenous Peoples was facilitated by the territory’s remoteness, the limited population, and strong support from the settler population in the area. As Coates states, for the most part it was more cost-effective and logical⁶⁶ for the Government of Canada to limit the Indian Act’s aggressive assimilationist policies in the Yukon.

The Anglican Church, however, felt a moral obligation to actively assimilate Indigenous Peoples into settler-society. In 1892 Bishop Bompas had opened a school near Dawson City for Yukon Indigenous children. In 1903, he moved the school south to Carcross and secured funds to open a larger school in 1911, which was named Chooutla Indian Residential School. As Indigenous education remained the responsibility of the Government of Canada, Bompas’ successor, Bishop Isaac Stringer petitioned for federal funding to build a larger school. Stringer secured funds to build the Chooutla Indian Residential School in Carcross in 1911.⁶⁷ Over the coming years, six more residential schools were opened throughout the territory, with the last one closing in 1988. These schools had long-term devastating effects on Indigenous children and families. Across Canada, government funded and church run residential schools caused generational trauma for Indigenous Peoples that is still evident today. In the Yukon, as

⁶⁵ Julie Cruikshank, “Negotiating with Narrative: Establishing Cultural Identity at the Yukon International,” *Source: American Anthropologist*, vol. 99, 1997, <https://www.jstor.org/stable/682133>.

⁶⁶ Coates, “Best Left As Indians,” 187.

⁶⁷ Clarke and K’anacha Group, *Tr’ehuhch’in Nawtr’udaha: Finding Our Way Home*, 21-23.

elsewhere, these schools greatly strained Indigenous-Crown relations and caused distrust between Indigenous Peoples and government officials, clergy, and police.

The residential schools were counterproductive to social segregation, as they pulled the children out of their communities and into classrooms to eradicate their language and traditions and replace them with those of the settler-society. Consequently, many Indigenous children returned to communities without the necessary skills to be self-reliant and therefore needed government assistance. Many residential school survivors felt alienated from both their Indigenous communities and settler society, as they had not developed the hunting and fishing, sewing, or other skills their parents would have taught them, and they experienced racism in the larger settler communities.⁶⁸

By the 1920s, non-Indigenous peoples, goods, and lifeways permeated the Yukon, residual and current effects of the fur trade, missionaries, and the Gold Rush. Many Indigenous individuals had learned to speak English with increased non-Indigenous interaction, both willing and forced. Anglican, Catholic, and Baptist church officials had seen a rise in Christianity in the region also. Economic values of Yukon Indigenous Peoples had shifted as they came to appreciate and demand European goods. Trapping, once a communal activity, became an individual pursuit that allowed trappers to buy tea, sugar, flour, tobacco, knives, kettles, and other manufactured commodities. Large gatherings became more frequent at trading posts like Fort Selkirk, Dawson, and Rampart House in the north. Births of children of mixed parentage increased during this time. Also, with the influx of non-Indigenous migrants, Yukon Indigenous

⁶⁸ Erin Hanson, "The Residential School System," First Nations and Indigenous Studies - The University of British Columbia, 2009, https://indigenousfoundations.arts.ubc.ca/the_residential_school_system/.

Peoples were exposed to diseases they had never experienced before. Epidemics of influenza, whooping cough, dysentery, and Tuberculosis spread through the territory.⁶⁹

In summation, the Yukon Indigenous Peoples experienced a unique policy whereby the government initially sought to segregate them. The church's strong belief in assimilation through residential schools nevertheless dominated. The Government of Canada separated Yukon Indigenous Peoples from settler society to avoid the expenses of treaties and assistance and to avoid losing potentially profitable lands. Simultaneously, the government supported the churches' endeavors to "save" the Indigenous communities from paganism by providing small reserve lands and educational funding. As John S. Milloy points out, the schools were a "church- state re. Epidemic in which the government was the senior partner."⁷⁰ The church thus became the instrument of the Government of Canada to enact the assimilationist policies of the Indian Act in the Yukon. In the 1920s, the overall impact of the policies remained limited. Some Indigenous individuals avoided the non-Indigenous communities of Dawson City, Whitehorse and Mayo. Others sought to engage in trade or find employment and travelled to non-Indigenous settlements to do so. Through contact, these individuals learned about settler-society culture and language. They also contracted diseases that transferred back to their communities, causing large epidemics to decimate the Yukon Indigenous population. As government interest in the territory heightened, the Indian Act came to be enforced more thoroughly, causing increased hardship for Indigenous Peoples.

⁶⁹ Yukon Indian People, "Together Today for Our Children Tomorrow," 1973, 10-11.

⁷⁰ John S. Milloy, *A National Crime: The Canadian Government and the Residential School System: 1879 to 1986* (Winnipeg: The University of Manitoba Press, 1999), xiii. This is discussed in greater detail in the previous chapter.

The Department of Indian Affairs in the Yukon (1920s to 1960)

Inter-War Years

Indigenous communities in southern Canada experienced several aggressive assimilation laws that were heightened under Duncan Campbell Scott's leadership of the Department of Indian Affairs from 1913 to 1932. These laws included the reserve pass system, the work-for-rations-rule, the banning of the Potlatch, and the enforcement of residential schooling. In the Yukon, however, a unique situation unfolded. The stories of J.J. Van Bibber in *I was Born Under a Spruce Tree* provide a first-hand account of conditions in the Yukon during this time. Van Bibber was born in 1920 to an American father who came to the Yukon originally during the Gold Rush and a Tlingit mother, whose own mother fled her community near Juneau due to spousal conflict. Van Bibber's experiences as an Indigenous youth growing up in the '20s and '30s sheds light on the control that the government exerted over Indigenous Peoples in the Yukon. Because he had a non-Indigenous father, his experiences differed from those of other Indigenous individuals, which he reflects on throughout his narrative.

The Van Bibber family lived in a cabin near Pelly Crossing, where they cleared land for a small farm. Van Bibber notes that few other Indigenous families adopted this lifestyle, and he attributes his family's sedentary status to his father's choice. He describes other Indigenous families without European ancestry near his home living in tents and frequently moving around. They did not farm, so the Van Bibbers would often share vegetables with these families. By the early 1920s, Yukon Indigenous Peoples had not experienced the Indian Act's agricultural programs that forced communities to give up hunting and trapping and adopt a sedentary lifestyle on a reserve. They could freely move throughout the territory, in the absence of a reserve-pass system. Yet, Sifton and Oliver's segregation policy prevailed in the territory at this time. Indian Agent Hawksley reinforced the federal government's lack of aggressive assimilation in the

territory, instead encouraging Yukon Indigenous Peoples to be “independent, earning their own living, and (which would lead to their being) less liable to get into bad habits.”⁷¹

Despite the freedom to move about, residential schooling was increasing since 1911. J.J. Van Bibber relates how his three oldest siblings, who were nine to twelve years older than he was, were not expected to attend yearly, but he started school in 1927.⁷² He attended St. Paul’s Hostel in Dawson for five years, leaving when he was twelve years old without much resistance.⁷³ Other Indigenous children had greater difficulty avoiding mandatory enrollment at residential schools. The Royal Canadian Mounted Police (RCMP having been renamed from NWMP in 1920)⁷⁴ and priests sometimes ventured into Indigenous communities to forcibly remove children to school around this time. However, the Indian Act’s law on mandatory residential schooling was slower to reach the Yukon than elsewhere.

Epidemics, however, swept through the region with as much ferocity as in the south. Diseases including measles, tuberculosis, small pox and the flu devastated Yukon Indigenous communities. The number of deaths is uncertain, as the Indigenous population prior to the Gold Rush was not recorded by the Government of Canada. Indigenous Peoples themselves estimate that about half of the population succumbed to various diseases from 1900 to 1930.⁷⁵ Residential schools became a hotbed for these outbreaks. Van Bibber’s youngest sister contracted TB while away at school in Dawson.⁷⁶ Trading posts and mining towns also became areas where Indigenous individuals risked exposure.

⁷¹ Coates, “Best Left as Indians,” 191.

⁷² J.J. Van Bibber, *I Was Born Under a Spruce Tree*, ed. Niall Fink (Vancouver: Talus Publishing Group, 2012), 17.

⁷³ Van Bibber, *I Was Born Under a Spruce Tree*, 28.

⁷⁴ Royal Canadian Mounted Police, “Historically Relevant Dates to the RCMP,” Government of Canada, 2016, <http://www.rcmp-grc.gc.ca/en/historically-relevant-dates-rcmp>.

⁷⁵ Yukon Indian People, “Together Today for Our Children Tomorrow,” 11.

⁷⁶ Van Bibber, *I Was Born Under a Spruce Tree*, 28.

Many Indigenous individuals could avoid settlements during outbreaks, due to the limited infrastructure in the Yukon. With minimal transportation and communication infrastructure in the region in the 1920s, the government could not monitor or control Indigenous People's freedom of movement. Except for in mining communities around Mayo and Dawson City and port and railroad terminus cities like Whitehorse, the non-Indigenous population remained low throughout the territory. Small roadhouses dotted a winter stagecoach route that was built in 1921 from Dawson City to Whitehorse. In the warmer months, steamships were used as a means of transportation. Indigenous individuals regularly worked on these boats.⁷⁷ Some, like J.J. Van Bibber, sought employment in non-Indigenous settlements.

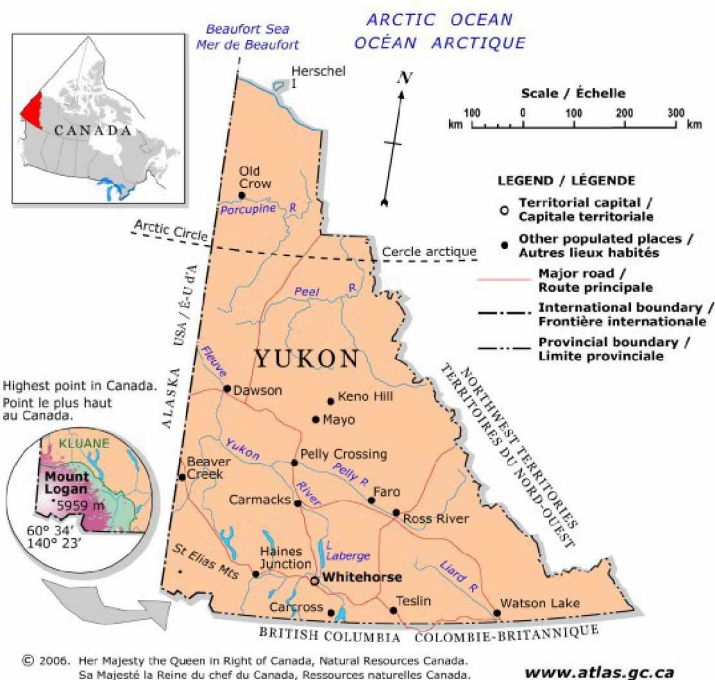


Figure 5: This map shows the layout of the Territory of Yukon's communities as they are today. The town sites were created close to major mining areas or they originated from Indigenous Peoples relocating along the Alaska Highway or Klondike Highway for convince purposes.⁷⁹

When Van Bibber left home at sixteen in 1936, he walked from Pelly Crossing to Mayo, about one hundred kilometers, to find work. He found a position as a longshoreman on the steamships and later as a heavy machinery operator. In the latter position, he worked to build the first winter road between Mayo and Stewart Crossing.⁷⁸ Van Bibber later

⁷⁷ Van Bibber, *I Was Born Under a Spruce Tree*, 17.

⁷⁸ Van Bibber, *I Was Born Under a Spruce Tree*, 44.

⁷⁹ Natural Resource Canada, "Canada - Yukon Map," Population Data.net, 2016, <https://en.populationdata.net/maps/canada-yukon/>.

travelled to Dawson City, where there were more opportunities for work. Indigenous individuals could move freely and engage in the fur trade and wage labour, as the Department of Indian Affairs' did not enforce the reserve-pass system like it had in the south. Harvesting furs of beavers, marten, lynx, and on occasion wolves was still lucrative in the '30s and greatly contributed to the economic well-being of many Indigenous communities. Van Bibber and his family took advantage of the trade business and worked a trapline in the winter and picked up odd jobs in the summer.⁸⁰ Though his life was not easy, Van Bibber's stories do not reflect the hardship most Canadians experienced during the Great Depression. This could be attributed to his limited reliance on capitalist, settler-society and his ability to live off the land. For some the Yukon's Indigenous population, however, living a traditional lifestyle was becoming more challenging.

The government's growing concern over game depletion in areas where non-Indigenous trappers over harvested exemplified settler infringement. The overharvesting occurred mainly around Dawson City, Mayo, and Whitehorse with recorded RCMP attempts at mitigating over-harvests in areas around Old Crow in 1929 and Little Atlin in 1932. For the most part, however, government officials refrained from permits and preserves to avoid imposing upon non-Indigenous individuals.⁸¹ Two preserves were created: the Peel River Preserve in 1923 and the Kluane Game Sanctuary in 1943. These conservation areas were not set aside for Indigenous Peoples,⁸² however, and hunting was regulated within their boundaries. In the case of the Kluane Game Sanctuary, hunting altogether was banned to combat the overhunting that had taken place

⁸⁰ Van Bibber, *I Was Born Under a Spruce Tree*.

⁸¹ Coates, "Best Left as Indians," 186.

⁸² Fumoleau, *As Long as This Land Shall Last*, 241.

by Alaska Highway builders.⁸³ These areas lay well outside of regions where mineral deposits had been found, to avoid hindering development. The reserves forced Yukon Indigenous Peoples who had hunted in the Kluane and Peel River regions for millennia out of their traditional territories.

As noted in the previous chapter, the Department of Indian Affairs began to recognize the ineffectiveness of the Indian Act following Campbell Scott's retirement in 1932 but would not amend the Act for nearly two more decades. The lack of interest in the territory's development during Campbell Scott's leadership and the Great Depression years left the Yukon out of the Numbered Treaties process and avoided strong enforcement of assimilationist policies. The government's most harmful policies toward the Yukon's Indigenous Peoples were the residential school system and game preserves. The Anglican Church encouraged the banning of Potlatches, but, as in the rest of Canada, the ban was not strongly enforced by the RCMP.⁸⁴ Epidemics had also caused trauma to many communities. Along with the grief associated with the deaths of loved ones, they deprived communities of knowledge that would have been passed on from Elders, and they forced relocations of survivors to relatives elsewhere when nearly whole communities were eradicated. For the most part, however, Sifton and Oliver's segregation policy prevailed. This was to change with the beginning of WWII that brought greater government involvement in the territory resulting in dramatic changes to Yukon Indigenous-Crown relations.

World War II

Infrastructure had developed slowly throughout the Yukon since the Gold Rush. Construction of the Alaska Highway, however, contrasted starkly with this general pattern. The

⁸³Council of Yukon First Nations, *Part One - Strangers in Our Own Land* (Whitehorse: Northern Native Broadcasting Yukon, 1998), <https://vimeo.com/123661676>; Julie Cruikshank, "The Gravel Magnet," 176.

⁸⁴Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Canada: University of British Columbia Press, 1986), 178.

project had been proposed in the 1930s, and both American and Canadian officials visited the region to see if building a road connecting Dawson Creek with Fairbanks was realistic. Canada lost interest in the venture, as it saw the United States as the primary benefactor, and the global depression directed funds spent elsewhere. The outbreak of WWII gave the project new life as it was branded as a necessary defense against the Axis powers. On March 5, 1942, the Government of Canada allowed the United States to begin construction on the road that would be funded by the U.S. Government.⁸⁵

Throughout the negotiations between the Canadian and American governments, no discussion addressed first settling a treaty with the Yukon Indigenous Peoples whose traditional territory would be impacted by the highway's construction. The exigencies of war demanded a speedy process that all but ruled out lengthy treaty negotiations. In addition, public opinion on Indigenous rights in Canada during the treaty hiatus years did not encourage recognition of Indigenous Title. This was not to change until the 1970s. As with the James Bay Cree, or Eeyouch, of northern Quebec, the Yukon Indigenous Peoples learned of the project after plans had been set in motion. Unlike the Eeyouch, Yukon Indigenous Peoples were in no position to engage in land claims litigation during this era. Thus, construction of the road proceeded with little regard for their land rights.

Yukon Indigenous Peoples supported the war effort whether knowingly or not, by enlisting and through construction work. In the Van Bibber family alone, three of J.J.'s brothers enlisted, as did many of his friends.⁸⁶ Fur prices fluctuated greatly over the years (refer to Figure 6 below) with significant drops in the 30s and 40s, resulting in a rise in participation in wage labour among Yukon Indigenous Peoples. Many moved close to the roadway for highway-

⁸⁵ Coates, *Canada's Colonies*, 171-173.

⁸⁶ Van Bibber, *I Was Born Under a Spruce Tree*, 103.

related work, including serving as guides, given their intimate knowledge of the dense wilderness.

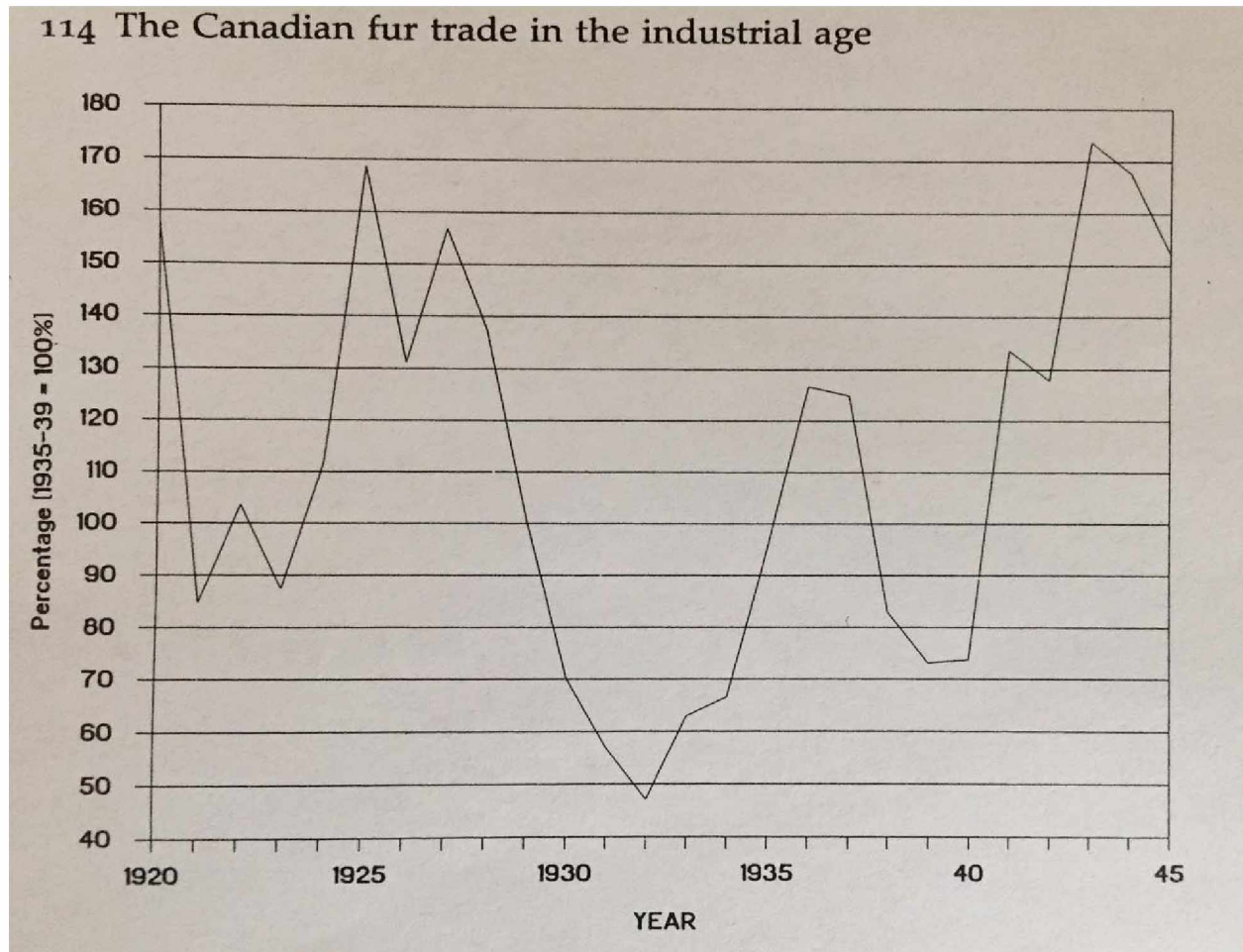


Figure 6: Fluctuations in fur prices from 1920 to 1945 in Canada.⁸⁷

Yukon Indigenous Peoples thus experienced significant exposure to settler society from the influx of non-Indigenous migrants and technologies into the territory.⁸⁸

The early version of the highway consisted of a cleared path connected with shoddy bridges that were known to collapse. Over a couple of months in 1943 road crews somewhat

⁸⁷ Arthur Ray, *The Canadian Fur Trade in the Industrial Age* (Toronto: University of Toronto Press, 1990), 144.

⁸⁸ Council of Yukon First Nations, *Part One - Strangers in Our Own Land*.

refined the corridor, and in November, the U.S. government declared it finished. Though the road had to be brought up to civilian-use standards by the Government of Canada in the coming years, it provided for transit through the territory from Alberta. With the end of construction, many military workers left the territory and many Indigenous individuals were left unemployed. Construction crews left vast amounts of waste, including abandoned machinery that was deemed too expensive to ship out.⁸⁹ The road greatly impacted the landscape and the peoples of the Yukon during and after its construction.

The Alaska Highway, along with the Klondike Highway that linked Dawson City and Mayo to Skagway in the 1950s, greatly altered Indigenous communities, as well. Families tended to settle in permanent dwellings in towns along either highway to gain easier access to commodities and transportation.⁹⁰ Eventually, these towns and villages became designated as Yukon First Nations (YFNs), based on language groups. By 1952, the Yukon Indian Agency had organized Yukon Indigenous Peoples into sixteen official bands and enforced an elected chief and council. These bands were Lower Post, Watson Lake, Upper Liard, Atlin (in British Columbia), Teslin, Carcross, Lake Laberge, Champaign, Aishihik, Burwash Landing, Beaver Creek, Carmacks, Fort Selkirk, Mayo, Dawson, and Old Crow.⁹¹ Some of these community centers were relocated to be on the highway (like Fort Selkirk's move to Minto and then Pelly Crossing) and some current YFNs⁹² have since changed their names (for instance Mayo to Nacho Nyäk Dun). Dependency on the environment to provide for food, shelter, and other necessities shifted toward greater reliance on settler-society goods. This resulted in an erosion of skills and a

⁸⁹ Coates, *Canada's Colonies*, 174-176.

⁹⁰ Cruikshank, "The Gravel Magnet," 185.

⁹¹ McClellan et al., *A History of the Yukon Indians*, 94.

⁹² I have begun using the term Yukon First Nations (YFN) instead of Yukon Indigenous Peoples after 1950 as that is when the Government of Canada began to enforce its Indigenous policies in the Yukon.

change in social roles, as families and communities no longer relied as heavily on men as hunters.⁹³ The fur trade collapsed in the 1940s, leaving many without an income they had come to rely on.⁹⁴ The Department of Indian Affairs' role in the territory significantly increased during this era, through providing more government assistance to the growing Indigenous communities that could no longer rely on the land to provide.⁹⁵ Government regulation of Indigenous Peoples was made easier in the Yukon through the highways and increased reliance on government support. YFNs experienced dramatic socio-economic changes over a short period of time over which they had varying levels of agency. In the coming decades, increased government control would make transitioning from living on the land to living in settled communities more difficult.

⁹³ Council of Yukon First Nations, *Part One - Strangers in Our Own Land*.

⁹⁴ McClellan et al., *A History of the Yukon Indians*, 174.

⁹⁵ Coates, "Best Left as Indians," 194.



Figure 7: This map shows the traditional territories of Yukon First Nations that were agreed on for the Umbrella Final Agreement, 1993.⁹⁶

⁹⁶ Environment Yukon, "Traditional Territories of Yukon First Nations, and Settlement Areas of Inuvialuit and Tettit Gwich'in," Government of Yukon, 2019, <http://www.env.gov.yk.ca/maps/view/detail/1/10/448>.

The Rise of Indigenous Rights in the Yukon (1950s to 1969)

Greater communication and transportation infrastructure brought more settlers to the Yukon in the 1940s. The population rose from 4,914 in 1941 to 9,096 in 1951,⁹⁷ reducing the YFN Peoples' percentage of the total population to 24 percent.⁹⁸ By 1948, Indian Agent Jack Meek had several assistant agents working with him in the region, whereas two years earlier he had worked alone. Increased infrastructure, a growing settler-society, and more Department of Indian Affairs officials resulted in greater government control in YFN communities. Game laws restricted YFN Peoples from hunting and fishing freely as they had done traditionally, and traplines now had to be registered.⁹⁹ Non-Indigenous communities remained uninviting for YFNs Peoples. One Indigenous woman recalls that her family was segregated to the back of a restaurant when dining out in Whitehorse. She also remembers that her parents felt the need to hide their regalia, drums, and food from RCMP officers who enforced the policies of the Department of Indian Affairs.¹⁰⁰

During this time, many individuals gave up their status under the Indian Act's enfranchisement policy. One elder, Johnny Johns, explained that he chose enfranchisement because being a Status-Indian hindered his progress, as he could not get a job or do business.¹⁰¹ Becoming non-status also had drawbacks, including losing government assistance. Under the Indian Act, First Nations women who married non-Indigenous men forfeited their status and the children under twenty-one years of age of Non-status-Indians also lost their status.¹⁰² Status had

⁹⁷ Statistics Canada, "Population of Canada, by Province, Census Dates, 1851 to 1976" (Ottawa, 2019), https://www150.statcan.gc.ca/n1/pub/11-516-x/sectiona/A2_14-eng.csv.

⁹⁸ Coates, *Canada's Colonies*, 212.

⁹⁹ McClellan et al., *A History of the Yukon Indians*, 91.

¹⁰⁰ Council of Yukon First Nations, *Part One - Strangers in Our Own Land*.

¹⁰¹ Council of Yukon First Nations.

¹⁰² Yukon Indian People, "Together Today for Our Children Tomorrow," 1973. 15.

little bearing on many individuals, however; it did not change how others in their communities treated them. But as YFNs developed their governments in later years and the need grew for YFN citizens to register with their own governments, differences in status caused divisions in communities.¹⁰³

The 1960s brought another mineral resource development boom in the Yukon. Unlike the Gold Rush, the end of WWII did not lead to a dramatic decline in the non-Indigenous population. Between 1951 and 1976, the Yukon's population continued to rise from 9,096 to 21,836,¹⁰⁴ with YFN Peoples remaining minorities.¹⁰⁵ Though most of the military personnel had left, workers from the south arrived to fill positions in mining. One of the mines, the Faro Mine on Kaska Dena traditional territory, became a leading employer in the Yukon for non-Indigenous individuals. An agreement between the Government of Canada and the Anvil Mining Cooperation that ran Faro stated that overall Indigenous employment at the mine would amount to 25 percent in its fifth year. The highest YFN employment the mine achieved, however, was 10 percent in its second year of operation, which dropped to 1 percent the following year. The decrease in Indigenous workers has been attributed to YFN dissatisfaction with the employment where they experienced discrimination, harsh living and working conditions, few training opportunities, and social isolation.¹⁰⁶ Repeating the pattern of the Gold Rush, Faro Mine construction took place without regard for Indigenous Title and caused gross environmental

¹⁰³ McClellan et al., *A History of the Yukon Indians*, 103.

¹⁰⁴ Statistics Canada, "Population of Canada, by Province, Census Dates, 1851 to 1976."

¹⁰⁵ Coates, *Canada's Colonies*, 212. As epidemics among Indigenous communities also slowed, the Indigenous population in the territory also rose between 1951 to 1976 from 2, 200 to 6, 000.

¹⁰⁶ Martin Weinstein, "The Ross River Dena: A Yukon Aboriginal Economy" (Comox, BC: M.S. Weinstein Consulting Services, 1993), 33, <https://docplayer.net/79599812-The-ross-river-dena-a-yukon-aboriginal-economy.html>. The non-Indigenous miners who arrived greatly impacted the Kaska Peoples, including raiding the nearby Indigenous community for women and random violent attacks on men (27-28).

degradation to the region that remains unresolved today.¹⁰⁷ Currently, owing to this well-recognized history of environmental degradation in traditional territories and disregard of Indigenous Title, the Yukon Umbrella Final (Land Claims) Agreement requires that northern development projects consistently demonstrate that they will uphold Indigenous rights. In the 1960s, however, these concerns were not at the forefront of Canadian consciousness.

Indigenous communities then faced social hardships generated by government policies. These included economic difficulties, inadequate housing, residential schooling, reliance on government assistance, lack of employment opportunities, culturally insensitive health and social services, high rates of substance abuse, and family and community conflicts.¹⁰⁸ YFNs responded to these unacceptable conditions by establishing political organizations to voice their concerns collectively. In 1968, Chief Elijah Smith, a YFN veteran, and other leaders from YFN communities established the Yukon Native Brotherhood (YNB). YFNs, like Indigenous Peoples elsewhere in Canada, had expanded their perspectives on their Indigenous rights and how to assert them vis-à-vis territorial and federal authorities.¹⁰⁹ When Prime Minister Pierre Elliott Trudeau and his Minister of Indian Affairs, Jean Chrétien announced the *White Paper, 1969*, YFNs joined the chorus of protestors across the nation. When asked about the Indian Act in 1968, Smith stated, “We feel the people of the North owe us a great deal and would like the Government of Canada to see that we get a fair settlement for the use of the land. There was no treaty signed in this country, and they tell me the land still belongs to the Indians. There were no

¹⁰⁷ Weinstein, “The Ross River Dena,” 30-31. Over the years, the Faro Mine has experienced multiple leakages in the tailing ponds that have resulted in high levels of toxic chemicals, including cyanide, lead, zinc, and arsenic, entering the surrounding environment.

¹⁰⁸ Coates, “Upsetting the Rhythms: The Federal Government and Native Communities in the Yukon Territory, 1945 to 1973,” in *Out of the Background: Readings on Canadian Native History*, ed. Kenneth S. Coates and Robin Fisher (Toronto: Copp Clark Pitman, 1988), 196 - 197.

¹⁰⁹ R. Scott Sheffield, “Indigenous Peoples and the World Wars,” *The Canadian Encyclopedia* (Historica Canada, 2018), <https://www.thecanadianencyclopedia.ca/en/article/indigenous-peoples-and-the-world-wars>.

battles fought between the whites and the Indians for this land.”¹¹⁰ Chief Elijah Smith and the YNB went on to seek an audience with Lloyd Barber who had been appointed as the first Commissioner of Indian Claims after the White Paper debacle. Barber’s role was to assess the grievances of Indigenous Peoples in relation to land claims and propose resolutions.¹¹¹ In 1972, the YNB and Barber made an agreement nicknamed the *Beacon Arms Treaty*, outlining that the Indian Claims Commission would give \$60,000 and a six-month contract to YFNs to formulate a claim for submission to the Government of Canada.¹¹² On November 15, 1973, the YNB along with the Yukon Association for Non-Status Indians, agreed to create the Council of Yukon Indians (CYI) that would have the sole purpose of pursuing a fair settlement of a YFN land claim.¹¹³ The CYI did not disappoint.

¹¹⁰ McClellan et al., *A History of the Yukon Indians*, 95.

¹¹¹ Keith Crowe, “Comprehensive Land Claims: Modern Treaties,” *The Canadian Encyclopedia* (Historica Canada, 2018), <https://www.thecanadianencyclopedia.ca/en/article/comprehensive-land-claims-modern-treaties>.

¹¹² McClellan et al., *A History of the Yukon Indians*, 101.

¹¹³ McClellan et al., *A History of the Yukon Indians*, 103.

CHAPTER FIVE: THE MODERN LAND CLAIMS ERA IN THE YUKON

Liberal Federal Government – Pierre Elliot Trudeau (1968-1979; 1980-1984)

In 1973, after decades of being pushed to the fringes of society and under increased government control, the YNB produced *Together Today for Our Children Tomorrow: A Statement of Grievances and an Approach to Settlement by the Yukon Indian People* (TTFCT). This document reflects on Indigenous life before non-Indigenous settlement in the territory and the effects of different periods of colonial development on Yukon Indigenous Peoples. It then identifies in detail the harms that aggressive assimilation policies of residential schools and labeling some people as non-status Indian caused. The report ends with changes YFN sought to ensure a better future for their decedents. TTFCT also discusses Indigenous Title, stating that Indigenous Peoples did not own lands, but that “all lands were ‘tribal’ lands.”¹ The overall message of TTFCT is a call for cooperation, whereby non-Indigenous people seek to learn about YFNs, and Indigenous Peoples benefit equally in economic development. The YFNs expressed the need for a reformation of the Department of Indian Affairs that would encourage a greater role for Indigenous Peoples in the Yukon economy, one that would also respect traditions and languages through the preservation of YFNs’ cultural ties to their traditional territories. The last section of TTFCT, titled *Settlement*, discusses the YFN call to engage in treaty negotiations.

In January of 1973, YFNs gathered in Whitehorse to finalize the document. That same month the *Calder Case* recognized Indigenous Title. A month later, the YNB presented TTFCT to Prime Minister Pierre Elliott Trudeau, after persistent pressure from Indian Land Claims Commissioner Barber to do so. As TTFCT states:

¹ Yukon Indian People, “Together Today for Our Children Tomorrow,” 1973, 13.

The Yukon Native Brotherhood on behalf of all the Indians of the Yukon Territory hereby declares that this Settlement is complete and final and wipes out any and all claims which are based upon native rights, title, use or occupancy to land in the Yukon Territory against the Government of Great Britain, Canada, and Yukon, and all other persons.²

Prime Minister Pierre Elliott Trudeau responded by acknowledging existing Indigenous Title in the Yukon that had not been extinguished and therefore warranted treaty negotiations. Within a month, the Council of Yukon Indians (CYI) formed with the specific purpose of negotiating a treaty. The Government of Canada accepted the TTFCT as a starting point for a comprehensive land claims negotiation, the first such process in the post-*Calder* era. This action initiated a Government of Canada policy that extended the responsibility of the federal government to negotiate settlements with Indigenous Peoples who resided on unceded territory across Canada.³ In 1974, Trudeau established the Office of Native Claims, and in 1975, the James Bay Cree and Northern Quebec Agreement was finalized. The YFN negotiation process had only begun. During the two-decade process, economic development in the territory highlighted Indigenous concerns.

Since the mid-1950s, interest in oil and gas development in the north had increased.⁴ By 1970, discovery of gas and oil in Alaska and in the Mackenzie Delta area in the NWT had intensified this interest. Based on these discoveries and the known oil deposits at Norman Wells, whose development had never been realized, the Government of Canada encouraged companies to develop a pipeline project that would link southern Canada and the United States with the north. The proposed pipeline would snake its way up the Mackenzie Valley, through northern

² Yukon Indian People, "Together Today for Our Children Tomorrow," 25.

³ Lloyd Barber, "Commissioner on Indian Claims Commissaire Aux Revendications Des Indiens" (Ottawa: Minister of Supply Services, Canada, 1977), 12, http://sclaimswp.bryan-schwartz.com/wp-content/uploads/images/stories/specific_claims_docs/03-ICC_CRI_Docs/TheBarberReport1977.pdf. These areas were mostly located in the Northwest Territories (including Nunavut), northern Quebec, and British Columbia.

⁴ Kenneth Coates, *Canada's Colonies: A History of the Yukon and Northwest Territories* (Toronto: James Lorimer & Company LTD., Publishers, 1985), 206.

Yukon to Alaska, crossing Indigenous subsistence areas and migration routes to caribou calving grounds in the Arctic. In 1972, the Vuntut Gwitchin of Old Crow, Yukon sent a petition to Ottawa concerning oil and gas development on their traditional hunting grounds.⁵ With the growing awareness of Indigenous rights and Comprehensive Land Claims, Trudeau's Liberal Government sent Justice Thomas Berger in 1974 to investigate the social, environmental and economic impact of the proposed pipeline.

The Mackenzie Valley Pipeline Inquiry, also known as the *Berger Inquiry*, travelled through northwestern Canada speaking with Indigenous and non-Indigenous persons about their perspectives on the project. In 1977, a report titled *Northern Frontier, Northern Homeland* (nicknamed the *Berger Report*), consisting of 240 pages, recommended a moratorium on pipeline construction for ten years in NWT, allowing time for Indigenous Peoples to settle their land claims. Berger advised a perpetual ban on a pipeline through the northern Yukon to encourage the continued health of the Porcupine Caribou Herd and the community of Old Crow. Later that year, a follow-up report titled *Alaska Highway Pipeline Inquiry*, proposed an alternate pipeline route along the Alaska Highway. The CYI received government funding to facilitate YFN participation in the hearings regarding the alternate proposal, as it had with the *Berger Inquiry*.⁶ A Yukon pipeline has yet to come to fruition, despite years of planning and billions of dollars spent. In December 2017, the Canada Broadcasting Corporation announced the Mackenzie Valley Gas Pipeline had been shelved, with the National Energy Board stating that the current natural gas prices did not justify the project.⁷ The *Berger Inquiry* was monumental in its practice

⁵ Crowe, "Comprehensive Land Claims: Modern Treaties."

⁶ Catherine McClellan et al., *A History of the Yukon Indians: Part of Our Land, Part of Our Water* (Vancouver: Douglas & McIntyre, 1987), 98-99.

⁷ Walter Strong, "Mackenzie Valley Pipeline Officially One for the History Books," *CBC News*, December 28, 2017, <https://www.cbc.ca/news/canada/north/mackenzie-valley-gas-project-no-more-1.4465997>.

of consulting Indigenous Peoples of the region and set a precedent within Canada when engaging in resource development on Indigenous traditional territories.

Conservative Territorial Government – Chris Pearson (1978 – 1985)

In 1978, the Government of the Yukon achieved responsible government with the election of its first Premier, Chris Pearson. The appointed Commissioner, who had acted as both head of state and head of government, was now solely head of state, in a role similar to that of the lieutenant-governor. An elected legislative assembly also took control of the territorial government in 1979. The Government of the Yukon was in the process of devolution as the territory developed economically and politically. Who controlled what, however, was difficult to determine without a YFN treaty.

The proposed pipeline projects did not push the land claims settlement in the Yukon to finalization. Year by year, YFNs became more knowledgeable about the Canadian systems of government and were better able to advocate for themselves. By 1980, negotiations with Ottawa had led to a signed agreement regarding temporary benefits for Elders, along with four agreements in principle with respect to hunting, fishing, trapping, and land-use planning. Negotiations slowed after these milestones, however.⁸ Due to disagreements among YFNs, the Kaska nations of Liard First Nation and Ross River Dena Council left the collective YFN negotiating table to form a separate negotiating party. In 1983, the federal government released *In All Fairness* that declared treaties to be “specific and finite.” This meant that once the treaty was signed, the Crown’s duty to consult ended, there was a clear distinction between reserves

⁸ McClellan et al., *A History of the Yukon Indians*, 104.

and Crown lands, where Indigenous Title had no bearing, and the government was absolved of any further obligations not stipulated in the treaty.⁹

In January 1984, progress on a settlement in the Yukon resumed with an agreement between Minister of Indian Affairs, John Munroe, and the CYI chairman, Harry Allen. It proposed that YFNs would receive 20,000 km² and \$620 million, paid over twenty years, while Indigenous Title would be extinguished, in accordance with the policy outlined *In All Fairness*. The negotiations took place with little input from the communities.¹⁰ When Harry Allen and John Munroe proposed the agreement to the CYI General Assembly, members rejected it, owing to the following unacceptable provisions: no recognition and affirmation of subsistence hunting; no Indigenous control of lands; land selections based on need, as the government and not the YFN perceived it; and recognition of Non-Status Indians. Also, highly objectionable was the extinguishment of title, a mandate that was now being rejected by land claimants, in light of the *Constitution Act of 1982*, which recognized Indigenous rights although it did not define them. By 1984, *In All Fairness* had lost favour within Parliament and a new government would generate new policies relating to land claims. Furthermore, the Government of Canada had begun to discuss Indigenous self-government by this time.

Conservative Federal Government - Brian Mulroney (1984-1993)

New Democratic Territorial Government – Tony Penikett (1985-1992)

Owing to YFNs' failure to reach an agreement within the specified timeframe, the CYI lost its land claims negotiations funding from the Government of Canada but still continued negotiating for a treaty. Other more promising developments lay ahead, however. In 1986 the

⁹ Terry Fenge, "Negotiation and Implementation of Modern Treaties between Aboriginal Peoples and the Crown in Right of Canada," in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, ed. Terry Fenge and Jim Aldridge (Montreal: McGill-Queens University Press, 2015), 110.

¹⁰ Council of Yukon First Nations, *Part Three - From Yesterday to Tomorrow* (Whitehorse: Northern Native Broadcasting Yukon, 1998).

Coolican Report, or *Lasting Treaties: Lasting Agreements* (LTLA), was released. As mentioned in the previous chapter, this report suggested treaties as an on-going process that did not extinguish Indigenous Title post-signing. While Parliament rejected it in favour of a new *Comprehensive Land Claims Policy*, it had introduced new ideas. Without federal funds, the CYI returned to the negotiating table, this time with new demands and stronger community involvement.¹¹

Many non-Indigenous Yukoners voiced opposition to a land claims settlement that would require Indigenous participation on government boards and committees. They also voiced concern over what non-extinguishment of Indigenous Title would mean.¹² Some used the judicial system to try to halt negotiations in the early 1990s.¹³ The CYI, however, gained an unexpected and not consistently dependable ally in the Government of the Yukon, which gained a seat at the negotiating table in the 1980s. Since its inception, the territorial government of Yukon paid little attention to Yukon Indigenous affairs.¹⁴ Tony Penikett, a strong supporter of devolution, increased pressure on the federal government for continued transfer of powers to the Government of Yukon. His territorial government recognized the importance of resolving treaty negotiations in this process.¹⁵ Under Penikett's leadership, the Government of Yukon set a precedent of becoming active in Indigenous affairs.¹⁶ Transfer of control over resources and lands from the federal government to the territory required a signed agreement between the

¹¹ Council of Yukon First Nations, "History of Land Claims," 2019, <https://cyfn.ca/history/history-of-land-claims/>.

¹² Council of Yukon First Nations, *Part Three - From Yesterday to Tomorrow*.

¹³ Kenneth Coates, "First Nations and the Yukon Territorial Government: Towards a New Relationship," 1994, http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1991-1-41-98-eng.pdf.

¹⁴ Coates, "First Nations and the Yukon Territorial Government," 18.

¹⁵ Tony Penikett, "'Indigenous Chiefs, Regional Legislators, and Nation States: Who Rules the Arctic in the 21st Century?' - Keynote Address by Tony Penikett, Former Premier of the Yukon," University College London, 2017, <https://www.ucl.ac.uk/global-governance/events/2017/oct/indigenous-chiefs-regional-legislators-and-nation-states-who-rules-arctic-21st>.

¹⁶ Coates and Morrison, *Land of the Midnight Sun*, 302.

YFNs, the Government of Canada and the Government of Yukon outlining who had jurisdiction over what. The territorial administration took a seat at the negotiating table for the final phase of the settlement, as by this time, enough administrative powers had devolved from the federal government to warrant its presence.¹⁷ In 1988, the three parties reached a new agreement-in-principle that would be finalized in the coming years.¹⁸

Liberal Federal Government – Jean Chrétien (1993-2003) and Paul Martin (2003-2005)

Conservative Territorial Government – John Ostashek (1992-1996)

On May 29th, 1993, the new Chair for the CYI, Judy Gingell, representing fourteen YFNs, the Government of Canada's Minister of Indian Affairs and Northern Development, Tom Sidden, and Yukon's Premier, John Ostashek, signed the Umbrella Final Agreement (UFA) in Whitehorse. Though it was a Tory territorial government that signed the agreement, the negotiations were finalized under the previous New Democratic Party (NDP) government of Penikett who later went on to work with other territorial governments in their devolution processes.¹⁹ This treaty was extensive and shaped by the long negotiating process. The YFN's demands had evolved over the years since 1973, as they gained new perspectives that led them to push for greater recognition of their self-determination. The change in the Indigenous leaders' attitude from their 1973 meeting with Prime Minister Pierre Elliott Trudeau to the 1993 signing ceremony illustrated a notable change in the socio-political climate surrounding land claims. In 1973, as Selkirk First Nation Elder, Danny Joe, recalls, YFN delegates searched Ottawa to find

¹⁷ Coates, "First Nations and the Yukon Territorial Government," 42.

¹⁸ Council of Yukon First Nations "History of Land Claims."

¹⁹ Penikett, "'Indigenous Chiefs, Regional Legislators, and Nation States: Who Rules the Arctic in the 21st Century?'" - Keynote Address by Tony Penikett, Former Premier of the Yukon." <https://www.ucl.ac.uk/global-governance/events/2017/oct/indigenous-chiefs-regional-legislators-and-nation-states-who-rules-arctic-21st>.

suit jackets for each member to wear. In the 1993 signing ceremonies, YFN members proudly wore their traditional regalia, and First Nations members drummed them into the gathering that took place in the Yukon.²⁰ The contrast demonstrates the resurgence of forest diplomacy in YFN-Crown relations.

At the start of negotiations in 1973, the Government of Canada focused on money and land. Over time, the Government came to recognize the concerns of the YFNs and the view of treaties as on-going processes that would allow them to rebuild their communities. Land and monetary compensation remained important in this process. The final agreement provided YFNs with much needed financial compensation of \$232 million over fifteen years.²¹ The negotiating process had been expensive for the communities that had to begin repaying their loans soon after. As Steve Smith, Chief of Champagne and Aishihik First Nations, stated when asked about the amount his First Nations had to repay, “I won't give you the exact number, but it was over \$10 million.” Some YFNs have yet to repay their negotiation loans.²²

The UFA also accorded more land than the 1984 agreement-in-principle provided, and more importantly, the UFA provided for the continuation of Indigenous Title to those lands. The UFA identified a framework for each of the fourteen YFNs to negotiate their final individual land claims agreements. The UFA outlined that each First Nation would have a designated amount of land, and they could select their designated lands, for both Category A (surface and subsurface rights) and Category B (surface rights). Significantly, the UFA's *Chapter 11: Land Use Planning* stipulated that the duty of the government to consult with YFNs about proposed

²⁰ Council of Yukon First Nations, *Part One - Strangers in Our Own Land* (Whitehorse: Northern Native Broadcasting Yukon, 1998), <https://vimeo.com/123661676>.

²¹ Council of Yukon First Nations, “History of Land Claims.”

²² Mike Rudyk, “Yukon First Nations Anticipate Windfall from Land Claim Loan Forgiveness and Reimbursement,” *CBC News*, March 22, 2019, <https://www.cbc.ca/news/canada/north/yukon-land-claim-debt-forgiveness-1.5066994>.

developments in the territory *extended to both settlement lands and Crown lands*. This means that during the land use planning phase, the Government of Yukon is legally obligated to involve the YFN(s) on whose traditional territory the proposed development would take place. This section of the UFA informed the *Peel Watershed* case that will be discussed in Chapter Six.

Besides land and monetary compensation, YFNs prioritized jurisdiction concerns during the negotiation process. The UFA provided for Indigenous representation on various regional and territorial boards. The *Yukon First Nations Self-Government Act*, created in 1994,²³ allowed greater participation of YFNs in the policy-making process relating to their lands, resources, governments, and programs. Over time, each First Nation has achieved the ability to take control over their communities' education and training, social services, cultural programming, policing, communications, economic development and to exercise self-government. That is, each YFN can write a constitution and pass laws for its citizens, as long as they are consistent with Canadian standards. In other words, the Governments of YFN can achieve devolution of power from the federal and territorial governments to their community governments.

The first four YFNs to sign their individual land claims and self-government agreements were Champagne Aishihik First Nations, First Nation of Na-cho Nyäk Dun, Teslin Tlingit Council and Vuntut Gwitchin First Nation all in 1995.²⁴ These individual agreements correspond with the UFA framework, while including unique stipulations for individual First Nation communities. For example, the concerns of Vuntut Gwitchin in Old Crow, a remote, fly-in community that relies on the Porcupine Caribou Herd differ somewhat from the concerns of

²³ Department of Justice, "Yukon First Nations Self-Government Act," Government of Canada, 2003, <https://laws-lois.justice.gc.ca/eng/acts/y-2.6/20030513/P1TT3xt3.html>.

²⁴ Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, "Building the Future - Yukon First Nation Self-Government" (Ottawa: Government of Canada, Minister of Public Works and Government Services Canada, 2008), https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-YT/STAGING/texte-text/pubs-btf-PDF_1316213023092_eng.pdf, 2.

Ta'an Kwäch'än who reside closer to Whitehorse, the capital of the Yukon and a major urban centre.

New Democratic Territorial Government – Piers McDonald (1996-2000)

In 1996, the *Royal Commission on Aboriginal Peoples* released its extensive report that highlighted the Indigenous rights of self-determination, self-government and “mutual recognition” in contrast with the historical land claims policy of Indigenous Title extinguishment. In that same year, the NDP won the territorial election. Premier McDonald aimed to stabilize the resource-based economy of the Yukon through economic diversification, a process that would be eased with devolution. He also saw the need to resolve Indigenous land claims to gain further control over territorial economic opportunities. He therefore strongly supported further resolution of individual YFN agreements.²⁵ In 1997, Little Salmon Carmacks First Nation and Selkirk First Nation signed their individual agreements. A year later, Tr'ondëk Hwech'in, whose traditional territories surround Dawson City where the Klondike Gold Rush centered, signed their land claims and self-government agreements.²⁶ As the YFNs finalized their agreements with the federal and territorial governments, the Government of the Yukon was also benefiting from greater devolution of powers for lands and resources. In 1998, territorial responsibility for oil and gas resources came into effect under the *Canada-Yukon Oil and Gas Accord Implementation Act*.²⁷ In the same year, the Government of Canada, Government of Yukon, and Council of Yukon First Nations (CYFN) signed the *Yukon Devolution Protocol Accord*. This would set in motion further devolution of powers to the territorial government.

²⁵ Coates and Morrison, *Land of the Midnight Sun*, 302.

²⁶ Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, “Building the Future.”

²⁷ John Olynyk and Keith Bergner, “Update on Land Claims and Devolution in the Yukon and the Northwest Territories,” 2002, 8, <https://www.lawsonlundell.com/pp/news-360.pdf?36750>.

Liberal Territorial Government – Pat Duncan (2000-2002)

On October 29, 2001, the Government of Canada's Minister of Indian Affairs and Northern Development and the Government of Yukon's Premier, Pat Duncan, signed the *Yukon Northern Affairs Program Devolution Transfer Agreement* (DTA). Indigenous signatories participated in the development of this document. The agreement states:

The objective of the Parties in entering into this Agreement is to provide for the transfer from Canada to the YTG (Government of Yukon) of the resources and responsibilities associated with NAP (Northern Affairs Program) and to do so in a manner that respects the protection provided by the Constitution of Canada for any existing aboriginal, treaty and other rights of the aboriginal peoples of Canada and that is consistent with Self-Government Agreements and any existing fiduciary duties or obligations of the Crown to aboriginal peoples of Canada.²⁸

In 2002, the Government of the Yukon continued the process of devolution by introducing five bills in the Yukon Legislative Assembly that called for greater control of lands, waters and other resources in the Yukon.²⁹ In that same year, the Ta'an Kwäch'än Council signed their individual agreement.

Conservative Territorial Government – Dennis Fentie (2002-2011)

On April 1, 2003, amendments to the *Yukon Territory Act of 1898* took effect with the goal to “modernize” the statute and implement certain provisions of the *Yukon Northern Affairs Program Devolution Transfer Agreement*.³⁰ The *Yukon Act* of 2003 gave the Government of Yukon “province-like” responsibilities for public lands, water, forestry, mineral resources and environmental assessment.³¹ This act had been passed under Duncan's Liberal Government in 2001, but took effect under the Conservative Government, the Conservative Party having

²⁸ Minister of Indian Affairs and Northern Development, “Yukon Northern Affairs Program Devolution Transfer Agreement” (Ottawa, 2001), 15, <https://www.rcaanc-cirnac.gc.ca/eng/1352470994098/1535467403471>.

²⁹ Olynyk and Bergner, “Update on Land Claims and Devolution,” 9.

³⁰ Minister of Justice, “Yukon Act” 2002, <https://laws-lois.justice.gc.ca/PDF/Y-2.01.pdf>, 1.

³¹ Crown-Indigenous Relations and Northern Affairs, “FAQs – Yukon Devolution,” 2013, <https://www.rcaanc-cirnac.gc.ca/eng/1352471189145/1537369386562>.

renamed itself the Yukon Party in 1991. Premier Dennis Fentie moved quickly in response to the 2003 Yukon Act to advance resource development in the Yukon, taking steps to open the Peel Watershed, a mostly undeveloped area in northeastern Yukon, for resource development. In 2004, the newly established Peel Watershed Planning Commission began consulting with a variety of parties regarding the proposed development and produced recommendations for land use based on those consultations. So began the series of events leading up to the *Peel Watershed* case that was finalized in 2018 and will be discussed in more detail in Chapter Six.

Later in 2004, the Kluane First Nation signed its land claims and self-government agreements, and Kwanlin Dun First Nation followed suit the next year. Carcross/Tagish First Nation was the last YFN to date to sign its self-government and land claims agreement in 2006. White River First Nation and the Kaska nations of Liard First Nation and Ross River Dena Council³² have yet to finalize an agreement with the federal and territorial governments regarding compensation and their land and resource rights. Over the years, negotiations between the Government of Canada, the Yukon Government and the Kaska Dena Council became heated. In 2006, the Kaska Dena (who also include the Kaska in British Columbia) engaged in a land dispute regarding the northwestern boundary of Treaty 8. The Kaska Dena have experienced internal conflicts, and the YFN has voiced concern over the British Columbia Kaska speaking for them during negotiations. The Kaska Dena Council also filed suit against the Government of the Yukon over the issuance of hunting permits. In 2015 Ross River First Nation and in 2018 the

³² Danny Case, “Letter to Concerned Kaska Citizens” (Lower Post, 2019), <https://kaskadenacouncil.com/download/kdc-response-to-kaska-citizens-re-kaska-dena-council-v-yukon-government-of-2019-yksc-13/?wpdmdl=4577&refresh=5c97abd68a7d81553443798>; John J.P. Donihee and Nicole Peterson, “Ross River Dena Council v. Yukon: The Duty To Consult And Wildlife Management - Environment - Canada,” *Willms and Shier Environmental Lawyers*, 2015, <http://www.mondaq.com/canada/x/452214/Environmental+Law/Ross+River+Dena+Council+V+Yukon+The+Duty+To+Consult+And+Wildlife+Management>. In the Ross River case, the court found that the Government of the Yukon had fulfilled its duty to consult; and in the Kaska Dena Council case, the court found that the lawsuit did not have the full support of the Kaska nations.

Kaska Dena Council claimed that the territorial government had failed in its duty to consult when issuing hunting permits in their traditional territories. The Kaska Dena Council voiced concerns about “mounting hunting pressures by sport hunters which is increasingly affecting Kaska’ rights to access traditional foods which many families rely on for sustenance.” The First Nations lost both lawsuits.

Also, under Premier Fentie’s Yukon Party leadership, the Legislative Assembly passed the *Cooperation in Governance Act (CGA)* in 2005, which recognized the “unique circumstance” and “respect(ed) the authority and jurisdiction” of both the Government of Yukon and Governments of YFNs. The CGA called for the creation of a forum to facilitate the CGA’s goal of “cooperation in governance.”³³ The Yukon Forum provided a platform to discuss YFN-Government of Yukon relations and allow for greater participation in policymaking for Indigenous Peoples in the territory. Consultations with the forum waned under Conservative Territorial party leadership but have since seen a resurgence under the current Liberal Government of Yukon, as discussed below.

Conservative Federal Government – Stephen Harper (2006-2015) ***Conservative Territorial Government – Darrell Pasloski (2011-2016)***

The Yukon’s devolution strongly aligned with the Conservative Harper Government’s Arctic Policy statement *Canada’s Northern Strategy: Our North, Our Heritage, Our Future*. Released in 2009 by the Minister of Indian Affairs and Northern Development, Jim Prentice, its four priorities included “Improving and devolving Northern governance.” That pillar, however, failed to mention improving self-government. The 2009 Northern Strategy was soon followed in 2010 with Harper’s similar Arctic policy statement titled *Statement of Canada’s Arctic Foreign*

³³ Government of Yukon, “Cooperation in Governance Act” (2005), <http://www.gov.yk.ca/legislation/acts/coopgo.pdf>.

Policy: Exercising Sovereignty and Promoting Canada's Northern Strategy Abroad. The federal Conservative Government's focus on northern development and devolution to territorial governments aligned well with the Yukon Government's acquisition of resource control. Neither of these Conservative policy statements, however, acknowledge the control that treaty agreements, like the UFA, outlined for Indigenous Peoples in territorial development. These circumstances influenced the development of the *Peel Watershed* case of 2017. The current Liberal Government, which gained party support both federally and territorially through the promise of reconciliation with Indigenous Peoples, has promised a revised Arctic Policy statement that supports "Indigenous-led action" to improve health, economies, languages and cultures in Arctic communities.³⁴

A 2010 Canadian Supreme Court decision to impact the Yukon significantly was *Beckman v Little Salmon/Carmacks First Nation*. This case stands as the first judicial proceeding that discussed the duty to consult within a modern land claim. The case involved agricultural development that would infringe on the traditional territory of the Little Salmon/Carmacks First Nation of the Yukon, specifically a member's trapline. Though the Supreme Court of Canada ruled that the duty to consult had been fulfilled, it affirmed Indigenous rights in other respects. The Court held that the Crown itself had to engage in consultation, and not allow another party to do so. One judge's concurring opinion held that treaty agreements, when relevant, should take precedent over common law when referring to the Crown's duty to consult.³⁵ With the increasing number of natural resource development initiatives in the Yukon, judicial precedents

³⁴ Crown-Indigenous Relations and Northern Affairs, "Canada's Arctic Policy Framework: Discussion Guide," 2017, <https://www.rcaanc-cimac.gc.ca/eng/1503687877293/1537887905065>.

³⁵ Team ReconciliAction YEG, "Case Briefs: Beckman v Little Salmon/Carmacks First Nation," (Alberta: Faculty of Law - University of Alberta, 2018), <https://ualbertalaw.typepad.com/faculty/2018/10/case-briefs-beckman-v-little-salmoncarmacks-first-nation.html>.

referring to the duty to consult illustrate the increasing recognition and protection of Indigenous rights in these processes.

In August 2012, the Government of Yukon signed an agreement with the Government of Canada to amend the DTA, with no indication of consultation with YFNs. Changes fell under the Resource Revenue Sharing Agreements in the DTA that ensured the Government of Yukon would receive more revenue from mineral and other resource development for use in the territory.³⁶

Liberal Federal Government – Justin Trudeau (2015-present)

Liberal Territorial Government – Sandy Silver (2016-present)

In 2016, the Yukon came under Liberal party leadership both federally and territorially. Several planks in Trudeau’s Liberal party platform related to reconciliation with Indigenous Peoples. Premier Sandy Silver’s Yukon Liberal platform included support for government-to-government relations; revitalizing, maintaining and celebrating First Nations knowledge, language and culture; keeping the spirit and intent during implementation of self-government agreements; and enacting in the territory the Calls to Action of the Truth and Reconciliation Commission.³⁷ Since being elected, Silver has so far kept a number of his campaign promises relating to YFNs.

Silver held the Yukon Forum with YFN leaders within thirty days of forming his government and continued to meet four times annually throughout the coming years as outlined in the 2005 CGA. The Yukon Forum signed a declaration on January 13, 2017 to renew its role of facilitating cooperation between the territorial and YFN governments and to focus on “substantive outcomes.” Discussions addressed issues relating to financial relations, health and

³⁶ Crown-Indigenous Relations and Northern Affairs, “FAQs – Yukon Devolution.”

³⁷ Yukon Liberals Party, “Platform,” (2016), <https://www.ylp.ca/platform>.

social services, justice, education, heritage, and fish and wildlife; and significantly, effective implementation of land claims and self-government agreements. The January 2017 declaration went so far as to highlight Chapter 11 of the UFA that outlines land use planning procedures within the territory. The declaration also announced a forthcoming joint five-year action plan to enact recommended strategies that are “collaborative and transparent.”³⁸ This plan came to fruition in October 2017 with options to amend it over time to mirror changing circumstances within the territory. The release of this plan was pivotal to the Yukon Forum, as Grand Chief of the Council of Yukon First Nations, previously known as the CYI,³⁹ Peter Johnston declared that if the forum had not come to some sort of agreement after ten years in existence, it would have been “dissolved.”⁴⁰ Such a development would have been a set-back to YFN-Crown relations, as the declaration itself represents a means of voicing Indigenous concerns within the territory. Yukon Forum newsletters released after each of the four yearly meetings have documented several steps taken by the Government of Yukon and YFN governments to initiate the five-year action plan. The forum has also facilitated Indigenous involvement in the Yukon environmental assessment legislation process.⁴¹ In November of 2017, YFN concerns stalled oil and gas exploration in the Kandik and Eagle Plains basins in the northern Yukon. According to the Yukon's Energy, Mines and Resources Minister Ranj Pillai, the combined protests of Vuntut

³⁸ Yukon Forum, “Declaration: Working Together” (Whitehorse, 2017),

<https://yukon.ca/sites/yukon.ca/files/eco/eco-yukon-forum-declaration-priorities-action-plan.pdf>.

³⁹ Council of Yukon First Nations, “Services,” (2019), <https://cyfn.ca/services/>. “In 1995, the Council adopted a new constitution in keeping with the language of the times, changed its name to the Council of Yukon First Nations... At present, the CYFN is made up of the following Yukon First Nations: the Champagne and Aishihik First Nations, the Teslin Tlingit Council, the First Nation of Nacho Nyäk Dun, the Selkirk First Nation, the Little Salmon Carmacks First Nation, the Tr’ondëk Hwëch’in First Nation, the Ta’an Kwäch’än Council, and the Carcross/Tagish First Nation. Four other First Nations in the Yukon Territory, the Vuntut Gwitchin First Nation, Liard First Nation, Kwanlin Dun First Nation, White River First Nation and Ross River Dena Council have chosen to work independently of CYFN at the present time.”

⁴⁰ Cheryl Kawaja, “Yukon Gov’t, First Nations Agree to Roadmap on Government Relations,” *CBC News*, October 2, 2017, <https://www.cbc.ca/news/canada/north/yukon-first-nations-forum-action-plan-1.4316362>.

⁴¹ Government of Yukon, “Yukon Forum” <https://yukon.ca/en/your-government/find-out-what-government-doing/yukon-forum>, 2019.

Gwitchin, Tr'ondëk Hwëch'in, and the Na-Cho Nyäk Dun First Nation halted proposed development of oil and gas in the region.⁴²

In Ottawa, Trudeau's budget announcement of March 19, 2019 held several promises for Indigenous Peoples. For YFNs, of great impact would be the proposed "funding of 1.4 billion over seven years starting in 2018-2019, to forgive all outstanding comprehensive negotiation loans and to reimburse Indigenous governments that have already repaid these loans." The purpose of the loan forgiveness, according to the Liberals' 2019 Budget, is to have communities invest the funds toward furthering their well-being.⁴³ Many YFNs felt the strain of these loans, and the funding would relieve those burdens. The budget also promised investment of \$700 million in Canada's Arctic region, including \$26 million to Yukon College for a new science building. According to Yukon College, "the vision for the new science building is to allow science learning through two lenses - using both Indigenous knowledge and western science."⁴⁴ The 2019 Budget shows strong support for Indigenous Peoples in Canada and, if enacted, will benefit many YFN communities.

Conclusion

Relations between the Department of Indian Affairs and the Yukon Indigenous Peoples have improved significantly since the 1950s. In contrast to elsewhere in Canada, the Crown (acting through the HBC fur trade) had a half century of relatively respectful relations with Yukon Indigenous Peoples from 1841 to 1890s, more so in the north than in the south.

⁴² CBC News, "Yukon Government Puts a Lid on Oil and Gas Interest in Territory," *CBC News*, November 24, 2017, <https://www.cbc.ca/news/canada/north/yukon-oil-gas-request-postings-cancelled-1.4417211>.

⁴³ Government of Canada, "Budget 2019: Chapter 3 - Advancing Reconciliation" (Ottawa, 2019), <https://www.budget.gc.ca/2019/docs/plan/chap-03-en.html#Core-Governance-Support-for-First-Nations>.

⁴⁴ Yukon College, "Budget 2019: Government of Canada's \$26 Million Investment in New Science Building Marks a Key Milestone for the Future Yukon University," March 19, 2019, <https://www.yukoncollege.yk.ca/news/201903/budget-2019-government-canadas-26-million-investment-new-science-building-marks-key>.

Eventually, the aggressive assimilationist policies began making their way into the Yukon along with increased communication and transportation infrastructure. When the Land Claims Commission began in 1973, the YFN saw their opportunity to regain agency over their communities. *Together Today for Our Children Tomorrow* outlined the hardships YFN were experiencing and possible solutions, making this document not only the first land claim to be presented to the federal government, but also a detailed account from an Indigenous perspective of possible policy solutions. The devolution of powers from the federal government to the Government of Yukon and the push to develop the region, helped to finalize the Umbrella Final Agreement in 1993. The twenty-year negotiation process, sweeping legal changes regarding Indigenous Rights allowed for YFN to enact greater control of their lands and gain self-governments. If negotiations had been rushed, like the James Bay and Northern Quebec Final Agreement, YFN would not have the same treaty rights they have today.

Relations between YFN and the territorial government have differed depending on the political party's initiatives. The early 2000s saw great promise in fostering a positive relationship between Indigenous Peoples and the Government of Yukon; however, under Conservative leadership, relations deteriorated. The *Peel Watershed* case brought YFN-Government of Yukon relations to the forefront of Yukoner and Canadian consciousness. The subsequent Liberal federal and territorial governments responded to public opinion that reflected increased respect for Indigenous rights. This resulted in several positive changes to policies involving YFNs and growing Indigenous participation in the development process. The Supreme Court's *Peel Watershed* decision greatly influenced YFN-Government of Yukon relations, setting a precedent for not only the territory, but all of Canada that reminded Canadian government of their duty to consult diligently and to respect treaty rights.

CHAPTER FIVE: INDIGENOUS RIGHTS

From their earliest interactions, the British and French fur traders realized the importance of not only respecting Indigenous Peoples but recognizing them as nations. As time went on, relationships evolved, and both European and Indigenous traders learned and participated in each other's cultures to encourage kinship and reciprocity. When the First Nations were no longer needed as military allies, the British Government began a process of assimilation with the goal of acquiring territory for settlement in the Canadian colonies. In 1867 the Government of Canada took over this initiative that has had resounding effects to the present day, repercussions that the current administration is attempting to mitigate. Since World War II, international perspectives on human rights have evolved rapidly, which eventually led to greater recognition of Indigenous rights. Canada reacted to these global influences and experienced a tumultuous resurgence of Indigenous voices in national diplomacy. Since the 1960s, Indigenous Rights and self-determination in Canada among First Nations, Métis and Inuit have advanced markedly. Given the power of the Canadian Parliament, which reflects myriad countervailing forces from Liberal emphasis on equality of individuals, to pragmatic economic challenges, to racism, however, Indigenous Peoples of Canada still struggle to actualize self-determination's potential, whether it be through a "citizens-plus" model or self-recognition.

Human Rights Make Way for Indigenous Rights

With the close of World War II, as the atrocities associated with the Holocaust came to light, and anti-colonial struggles advanced in the developing world, concepts of human rights rose to global prominence. As a result, recognition of the disproportionate hardships associated with racism that Indigenous Peoples around the world experienced increased. In 1957 the International Labour Organization (ILO) Convention No.107 supported the social and economic

well-being of Indigenous Peoples. The convention was crafted and passed without Indigenous input and focused on a liberal ideal of Indigenous Peoples as equals within settler societies through “integration and non-coercive assimilation.” While the convention process and goals can be viewed as harmful in a contemporary setting, the ILO’s Convention No.7 brought Indigenous rights into the international discourse, which in turn encouraged recognition of Indigenous Rights within individual western nations, including Canada.¹

The Government of Canada had already begun reflecting on its treatment of Indigenous Peoples through a Joint Committee of the Senate and House of Commons that analyzed the effectiveness of the Indian Act’s policies. The Department of Indian Affairs had been reconsidering its Indigenous policies since the 1932 retirement of Duncan Campbell Scott, whose aggressive assimilationist policies had not improved the impoverished state of many Indigenous communities. The re-evaluation had begun in 1946, and unlike the ILO’s convention No. 7, involved Indigenous voices in new policymaking. Indigenous Peoples proposed new concepts of self-determination, the need to reconsider fulfillment of treaty promises, and the need to respect Indigenous title through reinstating land claims negotiations for unceded territories. The 1951 revisions of the Indian Act produced by the joint committee reinstated Indigenous Peoples’ right to practice their traditions (such as Potlatches) and raise money for legal fees. The revisions allowed Canadian Indigenous Peoples to participate in Canadian governance, and Indigenous individuals were now more prepared to do so.² With these international and national shifts in perspectives and policies regarding Indigenous Rights, Indigenous political organizations gained prominence throughout Canada, some in accordance

¹ S. James Anaya, *Indigenous Peoples in International Law*, 2nd ed. (New York: Oxford University Press, 2004), 53-55.

² John F. Leslie, “The Indian Act: An Historical Perspective,” *Canadian Parliamentary Review* 25, no. 2 (2002): 26.

with provincial boundaries - for example, the Association of Saskatchewan Indians, the Indian Association of Alberta, the Union of B.C. Indians, the Dene Nation; and others that were country wide, for example, The National Indian Brotherhood that became the Assembly of First Nations. Since their inception, Indigenous political organizations have voiced Indigenous perspectives on the development of Indigenous Rights in Canada. Individual Indigenous activists, including Harold Cardinal, Stephen Kakfwi, and Arthur Manuel, also played defining roles in the movement. Indigenous views achieved national acknowledgement in 1969 with the backlash against the proposed Liberal Government's *Statement of the Government of Canada on Indian Policy* or *The White Paper, 1969*.³

“Citizens-Plus” Model

The release of the *White Paper, 1969*, which proposed to eliminate the Indian Act and assimilate Indigenous Peoples into greater Canadian society, marked a setback in Indigenous-Crown relations that had been slowly improving following WWII. John Diefenbaker's Progressive Conservative Government had formed a second Joint Committee in the late 1950s to further investigate Indigenous administration in Canada. It resulted in the revision of the *Canada Elections Act* to allow individuals with Indian Status to vote in federal elections. Also, under Diefenbaker's government, a *Canadian Bill of Rights* with an emphasis on equal rights for all Canadians, including Indigenous Peoples, was being drafted. Prime Minister Lester B. Pearson's subsequent Liberal government, however, proposed an alternate view of Indigenous Rights in Canada in its *Survey of the Contemporary Indian of Canada: Economic, Political, Educational Needs and Policies* in 1966. Nicknamed the *Hawthorn Report*, the document proposed that not

³ Dyck, Noel, and Tonio Sadik, "Indigenous Political Organization and Activism in Canada," in *The Canadian Encyclopedia*. Historica Canada. Article published June 06, 2011; last modified January 17, 2018, <https://www.thecanadianencyclopedia.ca/en/article/aboriginal-people-political-organization-and-activism>.

only were Indigenous Peoples entitled to equal rights as all Canadians, they had additional unique rights, as outlined in their treaty agreements. The “citizens-plus” concept contradicted the years of aggressive assimilationist policies that had placed Indigenous Peoples in a “citizens-minus” status within the greater Canadian society. According to the report, “the right derives from the promises made to them [Indigenous Peoples], from expectations they were encouraged to hold, and from the simple fact that they once occupied and used a country to which others came to gain enormous wealth in which the Indians shared little.”⁴ Despite this historical / theoretical basis for Indigenous Rights in Canada, Indigenous Peoples have consistently struggled to have Parliament recognize rights that the Crown has acknowledged, and pledges it has made, since colonization of North America began.

The citizens plus model conflicted with the Liberal ideal of an egalitarian society, as it suggested special treatment of a select group of peoples within Canada. As Brian Barry points out in *Culture and Equality*, multicultural policy initiatives separate citizens and create inequalities, regardless of the policy intentions. He also contends that it is impossible for society to affirm everyone’s cultural expectations simultaneously, as rights can be subjective due to diverse perspectives, and one group’s rights could compromise or cancel out those of another group.⁵ For example, under the western sense of land ownership, individuals who purchase land legally, own it and can prevent others from trespassing, a concept that conflicts with the Indigenous concept of community stewardship of land. The human rights advances of the 1960s and the discussions surrounding citizenship rights in Canada coincided generally with Barry’s liberal views of individual equality in Canadian society. And yet, as Tully points out, the

⁴Alan C. Cairns et al., “A Survey of the Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies” (Ottawa: Government of Canada, 1966), <http://caid.ca/HawRep1a1966.pdf>.

⁵ Brian. Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism*. (Wiley, 2013), 271.

framework within which constitutional rights are devised is based on western ideals, and ignores Indigenous perspectives, making the Liberal ideal of equality, unequal, as it forces cultural ideals onto Indigenous Peoples.⁶ Harold Cardinal's retort to Prime Minister Pierre Elliot Trudeau's promise of a *just society*, that this Liberal ideal was *unjust*, highlighted just this irony.⁷ The concept of equality for all, however, received an overall favourable response from Canadians, who found the terms of Western, Liberal equality proposed comforting and familiar for the most part. And yet, the implications of the equality proposed in the *White Paper, 1969* drew enough critique from the general public that it was revoked.

Substantial public opinion within Canada called for another form of equality that acknowledged the unique circumstance of Indigenous Peoples. Parliament had already encouraged Indigenous agency in policy-making and political organizations, and it could not ignore Indigenous voices in these processes. Interestingly, Indigenous views had entered discussions on a new Indigenous policy under Trudeau's Liberal Government. During consultation meetings, Indigenous participants voiced concerns over unfulfilled treaty promises and the disregard of Indigenous voices in policymaking. The Liberals, however, disregarded these concerns, and Minister of Indian Affairs and Northern Development Jean Chrétien and Prime Minister Trudeau presented the *White Paper, 1969* as a means to start fresh, eliminating the need for a special department to address the needs of a specific group of Canadians.⁸ According to Chrétien, through assimilation and the abolition of Indigenous land/treaty rights, Indigenous Peoples would gain the same status within the greater Canadian society as their

⁶ James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995), 1-3.

⁷ Cardinal, *The Unjust Society*. Cardinal's work is discussed more in a previous chapter.

⁸ Mark D. Walters, "Promise and Paradox: The Emergence of Indigenous Rights in Canada," in *Indigenous Peoples and the Law: Comparative and Critical Perspectives*, ed. Benjamin J Richardson, Shin Imai, and Kent McNeil (Portland: Hart Publishing, 2009), 32-33.

fellow, non-Indigenous citizens. Indigenous People's unexpected, vociferous rejection of the White Paper instead reinvigorated Parliament's need for the Department of Indian Affairs.

Since the mid-twentieth century, concepts of Indigenous Rights have evolved in Canada. The 1970s brought numerous political, economic and legal gains for Indigenous Peoples with land claims agreements and court cases that upheld Indigenous title to land. The "citizens-plus" model has gained ground within the context of modern land claims that consider both specific claims (on territory that had been treated) and comprehensive claims (on untreated territory). The patriation of the Canadian Constitution in 1982 marked a turning point in the expansion of rights to Indigenous Peoples. The *Charter of Rights and Freedoms*, which is part of the Canadian Constitution, extended protections to minority groups, including Indigenous Peoples, seeking to grant equal political and civil rights to all Canadians. Section 35 of the *Constitution Act of 1982* acknowledged the "extra" rights of Indigenous Peoples, recognizing the Crown-acknowledged rights that were not extinguished through surrender or legislation before 1982.⁹

The political scientist Alan Cairns, who contributed to the *Hawthorn Report* in 1966, continued his work to promote the acknowledgement of additional rights to Indigenous Peoples in his book, *Citizens-Plus: Aboriginal Peoples and the Canadian State*. Cairns' driving question asks: "Are our future constitutional arrangements going to foster some version of common belonging so that we will feel responsible for each other, and will be eager to engage in some common enterprises, as well as accommodate our differences?"¹⁰ Throughout the text, he argues that the use of language in the 1996 *Report of the Royal Commission on Aboriginal Peoples*, such as nation-to-nation relations, "conjures up images of a mini-international system and

⁹ Eric Hanson, "Constitution Act, 1982 Section 35," First Nations and Indigenous Studies University of British Columbia, 2009, http://indigenousfoundations.arts.ubc.ca/constitution_act_1982_section_35/.

¹⁰ Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (UBC Press, 2000), 6.

weakens the idea of a common citizenship.”¹¹ This in turn alleviates the settler population from feeling any responsibility towards First Nations, Métis, and Inuit, he claims. Cairns’ argument is somewhat Liberal in the sense that he seeks to abolish the idea of Indigenous Peoples as “others,” given that such thinking led to harmful Indigenous policies in the past. He argues that by integrating into society (without forfeiting their rights), First Nations, Métis, and Inuit will gain equal opportunity with other Canadians. He rejects the assimilationist ideal of the *White Paper, 1969*, arguing that the “citizens-plus” model offers a viable pathway toward a just society for Indigenous Peoples without resorting to an egalitarian extreme.

Cairns acknowledges that the “citizens-plus” model proposed in the *Hawthorn Report* may have had “its day” by 2000, but contends that Canada needs a “revised and updated” Indigenous policy that “fits” better with contemporary circumstances, rather than policies that have “displaced” the “citizens-plus.”¹² He points out that the struggles of Indigenous Peoples since the 1950s focused on gaining rights similar to other Canadians while maintaining their Indigenous land rights in the process.¹³ By 2000, the discourse had shifted to seek more comprehensive means of fully realizing Indigenous rights, through the honouring of treaty promises. In *Resource Rulers*, attorney Bill Gallagher presents a contemporary model of “citizens-plus,” by using Indigenous land disputes throughout Canada as case studies.¹⁴ The preface, written by Cairns, strongly supports Gallagher’s application of the “citizens-plus” model by suggesting various examples of what the “plus” could be for Indigenous Peoples.

¹¹ Cairns, *Citizens Plus*, 7.

¹² Cairns, *Citizens Plus*, 10.

¹³ Cairns, *Citizens Plus*, 20-23.

¹⁴ Bill Gallagher, *Resource Rulers: Fortune and Folly on Canada’s Road to Resources* (Waterloo: Bill Gallagher, 2011), 240-242. Gallagher gives examples from across Canada of Indigenous activism that has led to the assertion of Indigenous land rights. He describes the British Columbia “native legal winning streak” that started in 1985 with *MacMillan Bloedel v. Mullin* that halted clear-cutting and in turn led to a national “native legal winning streak” that affected “mining in Labrador, logging in New Brunswick, hydropower in Quebec, burial grounds in Ontario, hunting and trapping in the prairies, and oil field access in Alberta.”

In Gallagher's case studies, Canadian governments, both provincial/territorial and federal, or corporations, pursued economic development on Indigenous lands. When the government or industry insufficiently consulted with Indigenous communities, the courts interceded to block the development, increasingly upholding S.35 of the *Constitution Act*. By avoiding the required consultation process when initiating development on Indigenous lands (both ceded and unceded), the government has mispent time and resources in conflicts with Indigenous communities. Gallagher stresses that if government and industry respect the "plus" rights of Indigenous Peoples and involve them from the beginning of a project's proposal, First Nations, Métis, and Inuit can be partners, rather than adversaries, in resource development.

Notions of Indigenous rights thus evolved significantly in the half century following World War II. The 1950s saw great strides in acknowledging Indigenous concerns that had manifested under the early Department of Indian Affairs' assimilationist policies. Increasing recognition of human rights coincided with Indigenous Peoples gaining greater agency in influencing public policymaking. These strides included the revision of the Indian Act, with input from Indigenous voices across Canada. The *Hawthorn Report* considered an array of Indigenous concerns and proposed the "citizens-plus" model, which has since proven to be an effective means of asserting Indigenous land rights through the Canadian judicial system, as outlined by Gallagher. The "plus" has also come to somewhat recognize other Indigenous rights, such as harvesting rights. The idea of acknowledging extra rights to Indigenous Peoples seemed revolutionary when first introduced in 1966, considering the state of Indigenous policies prior to WWII. The Liberal Government's *White Paper Accord* ignored the concept, and the vociferous backlash to the proposal awakened Pierre Elliot Trudeau to the reality that "perhaps" Aboriginal

people have ‘more legal rights than we thought you had.’”¹⁵ Since the *White Paper, 1969*, Indigenous policies have oscillated between robust recognition of Indigenous Rights and proposals that reflected Parliament’s goals of finalizing treaties. Ongoing Indigenous activism has fostered further state recognition of the additional rights of Indigenous Peoples, political parties’ acknowledgement of Indigenous concerns, and the courts’ upholding of S. 35 of the *Constitution Act*, with emphasis on honour of the Crown through its duty to consult. The “citizens-plus” model has benefitted Indigenous Peoples within Canada as they have worked to mitigate and recover from the harms done through aggressive assimilationist policies. Recently, some scholars and activists, such as Coulthard and Simpson, have proposed other means – models that, like the *Hawthorn Report*’s 1966 suggestions, may appear radical. With time, however, these, too, may become mainstream views.

Self-Recognition

As noted above, S. 35 of the *Constitution Act* might not exist, had it not been for the insistence on its inclusion by Indigenous activists, such as George Manuel.¹⁶ Indigenous Peoples’ continual need to fight to achieve state recognition of their rights has weakened trust within the Indigenous-Crown relationship. The adversarial nature of Indigenous-Crown relations has led many scholars, like Taiaiake Alfred, Leanne Betasamosake-Simpson, and Glen Coulthard, to consider an alternative route to achieve Indigenous Rights through self-recognition that does not rely on the state to uphold its responsibilities. While the “citizens-plus” model improves upon the

¹⁵ Jim Aldridge, “The 1998 Nisga’a Treaty,” in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, eds. Terry Fenge and Jim Aldridge (McGill-Queens University Press, 2015), 143.

¹⁶ Arthur Manuel and Grand Chief Ronald Derrickson, *Unsettling Canada: A National Wake-Up Call* (Toronto: Between the Lines, 2015), 74. George Manuel organized a group of activists from Canada that traveled through Canada and Europe to communicate Canadian Indigenous perspectives of the patriation of the Canadian Constitution. When a proposed Constitution was released that did not include acknowledging Indigenous rights, there was such backlash that the premiers worked to have Section 35 reinstated.

Campbell Scott administration's policies, it still confines Indigenous Peoples to working within the Canadian state system, which constrains Indigenous Rights, given its emphasis on equality of individuals.

With large land settlements, like the Nunavut Land Claim Agreement in 1993 and the Yukon's Umbrella Final Agreement (UFA) in the same year, Indigenous Peoples have sought to maintain and gain state acknowledgement of cultural connections to the land through treaties and greater control over economic development in their regions. Paul Nadasdy argues, however, that the land claims process has forced changes upon Indigenous cultures that can be seen as equally transformative as the aggressive assimilation policies of the Indian Act. Focusing on the Kluane First Nation in the Yukon, Nadasdy points to the societal changes that Indigenous Peoples have had to enact to create nations that are recognizable by the Government of Canada and therefore can engage in land claim agreements. The drawing of borders, the recording and designation of official languages, and the creation of cultural differences between neighbouring "nations" have eroded the fluidity of the dispersed, small, family societies that spread across the territory prior to colonization. Before contact, Yukon Indigenous Peoples lived in small groups that relied on subsistence hunting and a seasonal rounds lifestyle, speaking languages that were shaped by the land, and respecting family territories but living without set boundaries.¹⁷ As Nadasdy points out, modern treaty negotiations have "created state-like indigenous political entities where there were none before."¹⁸

The current bureaucratic structures of the YFN governments represent another adaptation, and as Indigenous activist Arthur Manuel points out, this shift has resulted in further

¹⁷ Paul Nadasdy, *Sovereignty's Entailments: First Nation State Formation in the Yukon* (Toronto: University of Toronto Press, 2017), 97-100.

¹⁸ Nadasdy, *Sovereignty's Entailments*, 5.

federal government control of First Nations through the growing reliance of these First Nation governments on federal subsidies.¹⁹ Granted, financial support from the Government of Canada allows YFNs to function and provides employment opportunities, though many communities have sought other means of becoming financially independent through diversifying their economic investments.²⁰ Yet the land claims process has required these societies to develop Western parliamentary-like structures to gain recognition and has resulted in substantial deviations from traditional governance structures, although traditional cultures remain embedded in these modern institutions.²¹

Land concerns pervade discussions regarding Indigenous Rights. Indigenous scholar Leanne Betasamosake-Simpson highlights the land's significance to the cultural survival of Indigenous Peoples. First Nations, Métis, and Inuit relationships with their traditional territories form the foundations of their cultures; by disrupting Indigenous lifeways and interrupting these deep connections with their homelands, the Crown has engendered a multitude of harms with cascading and long-term effects. Simpson asserts that "settler colonialism will always redefine the issue with a solution that reentrenches its own power."²² By acting as the policymaker and final authority, the state reinforces its power over Indigenous Peoples, and puts their land at further risk. As Australian historian Patrick Wolfe points out, British and later Canadian Crown colonial and assimilation policies took lands upon which Indigenous Peoples had lived for

¹⁹ Manuel and Derrickson, *Unsettling Canada*, 39.

²⁰ Yukon First Nations Self-Government and Mapping the Way website, "Air North, Yukon's Airline Is an Economic Investment and Lifeline for Vuntut Gwitchin First Nation," Mapping the Way, 2019, <https://mappingtheway.ca/stories/air-north-yukons-airline-economic-investment-and-lifeline-vuntut-gwitchin-first-nation>. For example, the Vuntut Gwitchin own 49 percent interest of Air North.

²¹ Teslin Tlingit Council, "Our History," 2019, <http://www.ttc-teslin.com/our-history.html>. Many YFN have clan representation in their governments. For example, the governmental structure of Teslin Tlingit Council incorporates traditional Teslin Tlingit Clan culture into contemporary organizational and management principles

²² Leanna Betasamosake-Simpson, *As We Have Always Done: Indigenous Freedom through Radical Resistance* (Minneapolis: University of Minnesota, 2017), 178.

millennia and tried to replace their societies with settler societies.²³ The process of achieving state recognition of Indigenous lands and governments extends the reach of settler society. When Indigenous Peoples rally to defend their lands, the state tends to portray the people and their demands as irrational and impracticable. Examples include the 1990 Oka Crisis and the recent northern British Columbia pipeline protests, discussed in Chapter Two, that ended only when First Nations allowed state military to regain access to their traditional territories.

As Indigenous activist and professor at the University of Victoria, Taiaiake Alfred points out, Indigenous Peoples cannot find acceptance and fulfillment within the Liberal ideal of equal rights for all, when the basis of those rights has been constructed around European values. For instance, Canadian mainstream culture does not associate individual and community health and well-being with a spiritual connection to ancestral lands in the way that Indigenous Peoples of Canada and elsewhere do. Both Alfred and Simpson argue that Indigenous Peoples are currently experiencing a spiritual crisis owing to their disconnection from land.²⁴ Although large land settlements such as the UFA have designated settlement lands to Indigenous Peoples, land claims have not fully rectified past injustices or resolved Indigenous concerns, because the Government of Canada controls the political, economic, and legal systems that significantly impact Indigenous relationships with the land.

Indigenous political science professor at the University of British Columbia, Glen Coulthard, in *Red Skin, White Masks*, also strongly supports Indigenous Peoples' rejection of the Canadian political-economic system; that is, pursuing self-recognition, rather than looking to the

²³ Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (December 2006): 388, <https://doi.org/10.1080/14623520601056240>.

²⁴ Taiaiake Alfred, *Wasase: Indigenous Pathways of Action and Freedom* (Peterborough: Broadview Press, 2005), 90. Leanna Betasamosake-Simpson, *As We Have Always Done: Indigenous Freedom through Radical Resistance* (Minneapolis: University of Minnesota, 2017), 43.

colonial government for recognition. He contends that only breaking free of this structure will bring true freedom for Indigenous Peoples. The promises of Indigenous participation in Canadian government structures amount to insidious entrapment through growing reliance and assimilation, he argues, given the need to conform to be heard. He adds that “colonial powers will only recognize the collective rights and identities of Indigenous peoples insofar as this recognition does not throw into question the background legal, political, and economic framework of the colonial relationship itself.”²⁵ Coulthard discusses the consequences of trying to exist within the colonial system, referring to examples like the Missing and Murdered Indigenous Women and high Indigenous incarceration rate. The benefits of working within the system as lawyers or “word warriors,”²⁶ he argues, do not outweigh the costs incurred by Indigenous Peoples, including trauma and other effects of systemic racism inherent in the system.²⁷ He reiterates throughout his work the need for Indigenous communities to engage in the ethical framework that he terms, “grounded normativity,” achieved through “place-based practices and associated forms of knowledge” instead of the “Western time-oriented system.”²⁸ This inward looking pursuit of self-determination and well-being, or *grounded normative theory*, forms the basis of the self-recognition that Coulthard and others recommend, as opposed to seeking recognition by the state. The importance of land to Indigenous Peoples will be discussed in more detail below.

²⁵ Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota, 2009), 41.

²⁶ Dale A Turner, “This Is Not a Peace Pipe: Towards an Understanding of Aboriginal Sovereignty” (Montreal: McGill University Press, 1997), 9. Word warrior is a term Turner uses to describe Indigenous lawyers or scholars who work within the system, educating non-Indigenous individuals on Indigenous perspectives to allow greater realization of Indigenous Rights in the judicial system or academic institutions.

²⁷ Coulthard, *Red Skin, White Masks*.

²⁸ Coulthard, *Red Skin, White Masks*, 62.

Similarly, professor of global studies and anthropology at the New School in New York City, Jaskiran Dhillon identifies the folly in viewing Indigenous recognition and participation in Canadian systems as a fulfillment of Indigenous rights within Canada. In her chapter “*Seduction of Participation*” in the book *Prairie Rising*, Dhillon discusses how a multitude of forums with Indigenous representation fail to fully realize or act on Indigenous Peoples’ claims and desires.²⁹ Dhillon’s study focuses on the social work sector in Saskatchewan and how policies formulated to “help” Indigenous Peoples have failed, in some cases causing greater harm, because despite their being developed with Indigenous input, they are enacted through a Western, Parliamentary system that reinforces the authority of the state. As Dhillon states, “participation, as an instantiation of contemporary inclusionary governance, is fundamentally a reassertion of asymmetrical power relations, albeit in a new guise, because the terms and form of political engagement are mediated by a settler nation state that has been created through colonial dominance.”³⁰ From this perspective, Indigenous participation in mainstream government policy-making could result in mere pacification of Indigenous Peoples and concerns, leaving them little power to enact effective, long-term solutions to pressing issues.

Citizens Plus versus Self-Recognition

When first introduced in the 1960s the “citizens-plus” model offered an innovative approach to Indigenous rights. For generations before the *Hawthorn Report*, Indigenous Peoples in Canada were denied the full rights of Canadian citizenship; the concept of *additional* rights had yet to be conceived. Over time, as Indigenous Peoples have fought to have their rights acknowledged and entrenched in the Constitution, and have relied on those rights in judicial

²⁹ Jaskiran Dhillon, *Prairie Rising: Indigenous Youth, Decolonization, and the Politics of Intervention* (Toronto: University of Toronto Press, 2017), 156. Dhillon points out that the collaboration process is still “top-down social program development.”

³⁰ Dhillon, *Prairie Rising*, 14.

proceedings, these rights have become entrenched and almost common place. As we see in the next chapter regarding the *Peel Watershed* case, however, the need to reaffirm these rights continually in Indigenous-Crown relations remains. Nevertheless, these changes have allowed for Indigenous activism to encompass a broader ideal of Indigenous-Crown relations and conditions in Indigenous communities. With the increase in Indigenous perspectives in policymaking and other institutional processes, Indigenous Peoples are formulating new proposals to rectify colonial harms. While these ideas, such as grounded normative theory and self-recognition, may seem radical today, they hold promise in enhancing well-being in Indigenous communities. The main obstacle to realizing the grounded normative theory is its proposed independence from the Canadian state.

Fully avoiding participation in settler society would be challenging, owing to Indigenous Peoples' reliance on the state. Dhillon acknowledges this barrier to the separation implied in grounded normative theory and self-recognition, with an anecdote about Dave, a social worker for the Indigenous Alliance, a group created to speak at forums about issues affecting Indigenous youth. Canadian governments mandate and sponsor these programs and encourage Indigenous participation within their program planning. Although disregard of the "social and political histories" of today's conditions,³¹ hinders policy development, Dave points out that the flawed process nevertheless provides funding for his youth centers and programs.³² Indigenous communities depend on myriad forms of government support for services on which they rely. For instance, traditionally, Indigenous Peoples relied on the land, rather than government assistance, to provide their medicines or medical services. Knowledge of traditional healing practices has eroded through years of colonization, however. Even with a revival of traditional

³¹ Dhillon, *Prairie Rising*, 154.

³² Dhillon, *Prairie Rising*, 146.

healing, treatment of some illnesses, such as cancer, requires Western medical knowledge and technology. Indigenous communities will continue to need the Government of Canada to invest in health care facilities and to educate personnel to provide communities with Western healing methods. Safe drinking water and sanitation services also require subvention. As of March 2019, sixty First Nations communities had advisories for unsafe drinking water, down from 86 in January 2016.³³ The current Liberal Government of Canada has made a “commitment to end all long-term drinking water advisories on public systems on reserve by March 2021”³⁴ and through its investment, at least twenty-six First Nations communities have improved their well-being through better water and wastewater infrastructure. Simpson, however, insists in her book, *As We Have Always Done*, that true Indigenous well-being can be realized through grounded normative theory and a reclamation of the land.

Simpson acknowledges that obstacles to Indigenous self-recognition exist not only in Indigenous reliance upon state funding, but also in participation in the capitalist economy. Indigenous Peoples have exchanged their reliance on what the land provides for the material benefits the capitalist economy offers. She notes that her “Ancestors didn’t accumulate capital, they accumulated networks of meaningful, deep, fluid, intimate collective and individual relationships of trust.”³⁵ She contends that Indigenous Peoples do not have “resources or capital,” dismissing Gallagher’s concept within *Resource Rulers* of Indigenous Peoples having gained power through state recognition of Indigenous title to resources. From Gallagher’s perspective, the capital from natural resource development could allow greater independence

³³ Human Rights Watch, “Canada’s Obligation to End the First Nations Water Crisis,” 2016, <https://www.hrw.org/report/2016/06/07/make-it-safe/canadas-obligation-end-first-nations-water-crisis>.

³⁴ Indigenous Services Canada, “February 2019 Progress Update on Long-Term Drinking Water Advisories on Public Systems on Reserve,” Government of Canada, 2019, <https://www.canada.ca/en/indigenous-services-canada/news/2019/03/february-2019-progress-update-on-long-term-drinking-water-advisories-on-public-systems-on-reserve.html>.

³⁵ Betasamosake-Simpson, *As We Have Always Done*, 77.

from the nation state. However, Simpson stresses that development would entail the destruction of traditional lands to some degree, which would harm Indigenous well-being.

It is unclear, however, how Indigenous Peoples can accrue the capital required to develop community healthcare systems and other essential infrastructure and services if they subscribe to the grounded normative theory that existed before colonization. Both the self-recognition and “citizens-plus” arguments stress the need to affirm Indigenous land rights. The purposes of the two approaches differ, however, with the former appearing to prioritize developing the resources to maintain economic independence and the latter prioritizing reconnecting with the land to foster physical and spiritual health and well-being.

Citizens Plus or Self-Recognition in the Yukon

In 1973, YFNs presented the document *Together Today for Our Children Tomorrow* (TTFCT) to the Government of Canada, hoping to partner with the federal government in resolving various concerns in YFN communities. At the heart of this document lay the goal of preserving the YFNs’ cultural ties to the land. This prevalent Indigenous concern has sometimes been misconstrued as trying to keep traditions static. Indigenous communities have not advocated such rigidity, however. As New Zealand professor of law, Jeremy Waldron observes, cultures must constantly adapt to current circumstances and contemporary society to maintain their agency as they adjust to change,³⁶ whether governmental or environmental. Accordingly, recurrent references to an ideal of “preserving” Indigenous cultures harm Indigenous Peoples by constraining their ability to adapt.³⁷ The goal for many First Nations is not preservation of a society that existed centuries ago, but instead recognition and respect for the survival of the

³⁶ Jeremy Waldron, “Minority Cultures and the Cosmopolitan Alternative,” in *The Rights of Minority Cultures*, ed. William Kymlicka (Oxford: Oxford University Press, 1996), 109.

³⁷ Yukon Indian People, “Together Today for Our Children Tomorrow,” 19. On July 11, 1969, Jean Chrétien told the House of Commons that “The Indian Culture is worth preserving.”

cultural framework and values around which individual Indigenous social constructs developed. TTFCT highlighted the importance of looking to the future, elaborating a vision for “tomorrow” that stresses control of potential resource development and cultural identity. In the document, Yukon Indigenous Peoples clarified that their goal was not to “go back to the bush,” but to go “back to a set of Indian Values which help our (Yukon Indigenous) young people understand who they are.”³⁸ The changes in YFNs’ concerns in the twenty years between the TTFCT in 1973 and the finalization of the UFA in 1993 illustrate Waldron’s argument. These documents exhibited adaptation to changing circumstances, with the latter reflecting more recent, expanded notions of Indigenous self-determination.

Moreover, economic development had become a growing necessity for YFNs, although they insisted that these ventures should not be conducted at the expense of the environment. This dual emphasis on economic development and environmental protection reflects economic necessities as well as enduring cultural ties to the land. The UFA provided greater assurance of Indigenous agency and required that benefits from economic development accrue to First Nations, in *Chapter 11: Land Use Planning*, *Chapter 18: Non-Renewable Resources*, *Chapter 23: Economic Development Measure*, and *Chapter 24: Resource Royalty Sharing*, to name a few instances.

The development of the UFA aligns well with the “citizens-plus” model, given that YFNs achieved recognition of their Indigenous, or “plus” rights. The *Peel Watershed* case would turn on one of those plus rights – to be consulted regarding economic development on settlement and non-settlement lands. Gallagher’s argument for additional rights, however, leaves out a crucial concern for Indigenous Peoples – the continuation of cultural practices within their communities.

³⁸ Yukon Indian People. “Together Today for Our Children Tomorrow,” 19.

Gallagher focuses on economic benefits accruing to Indigenous Peoples as resource rulers but does not fully account for Indigenous perspectives on land. The “citizens-plus” model resulted in guarantees of YFNs’ participation in economic development questions, but those who favor the self-recognition model would ask “at what cost?”

Nadasdy argues that the “citizens-plus” model hindered the full development of Indigenous Rights in the Yukon, as YFNs had to alter their cultural values and social structures in order to access the “plus” rights. He claims the cultural changes required to achieve “territorial sovereignty” include becoming “state-like social entities,” which has transformed how Yukon Indigenous Peoples “relate to one another, animals, and the land.”³⁹ Coulthard and Simpson argue that the root of the problem lies in the fact that YFNs were forced into treaty negotiations to maintain control of their traditional territories. Indigenous Peoples can never have full control of their lands and affairs, the two argue, while they remain at the mercy of the Government of Canada. As political scientist at Western University, Christopher Alcantara points out, the Government of Canada, rather than the Indigenous nation, determines whether it will enter into treaty negotiations and the level of successful resolution. He contends that, “if government officials have poor perceptions of an Aboriginal group, then it is highly unlikely that these officials will be willing to complete a treaty with that group.”⁴⁰ The negotiations process requires that Indigenous groups comply with state requirements, while the state remains inconsistent in its recognition of Indigenous Rights. Thus, while YFNs made strides in pursuing their land claims under the “citizens plus” model, as long as the Government of Canada controls when and to what

³⁹ Paul Nadasdy, *Sovereignty’s Entailments: First Nation State Formation in the Yukon* (Toronto: University of Toronto Press, 2017), 299-301.

⁴⁰ Christopher Alcantara, *Negotiating the Deal: Comprehensive Land Claims Agreements in Canada* (Toronto: University of Toronto Press, 2013), 125.

degree it will recognize Indigenous rights, the potential of the “citizens plus” model to realize YFN visions for their communities will remain limited.

Conclusion

Various political and practical constraints, including Canadian Indigenous Peoples’ reliance on government aid, require engagement in the state political system. Maintaining agency within the Crown-Indigenous relationship will require their recognizing the cultural impacts of conforming with the nation-state system. With such recognition, Indigenous Peoples can continually monitor the costs and benefits of such interactions and decide when to engage and when to decline. No clear pathway exists toward full acknowledgement of Indigenous Rights in Canada. The “citizens-plus” model currently holds greater promise for Indigenous Peoples than the previous aggressive assimilationist policies, although the concept limits Indigenous communities’ ability to fully realize grounded normative theory, should they choose that route. And yet, if Indigenous communities reject state-bolstered economic development completely, they will risk increased economic dependence on the Government of Canada, owing to the transformation Indigenous communities have undergone as they have engaged in Western, capitalist political-economies. Land claims agreements like the UFA illustrate the costs and benefits of participating in mainstream legal, political, and economic processes. Participating in Canada’s political-economic system or breaking free from it will present sacrifices and opportunities for Indigenous Peoples. Whichever course they choose, that choice must be theirs.

CHAPTER SIX: PEEL WATERSHED CASE

The vast Peel Watershed includes roughly 67, 400 km², in the northeast Yukon. It lies within the Yukon First Nations' (YFN) traditional territories of the Vuntut Gwich'in (whose self-government office lies in Old Crow), the Tr'ondëk Hwëch'in (whose self-government office lies in Dawson City), and the First Nation of Na-Cho Nyäk Dun (whose self-government office lies in Mayo). Areas of the watershed also fall into the traditional territory of the Northwest Territories First Nation, Teetł'it Gwich'in. The area is almost devoid of any infrastructural development, except for the Dempster Highway that runs along its western edge. The Peel Watershed drains 14 percent of the Yukon Territory and is fed by six major tributaries that flow into the Beaufort Sea via the Peel and Mackenzie rivers. The Peel Watershed is home to numerous species, including some that are considered threatened within Canada and the world, such as the woodland caribou. It remains a vital hunting and fishing region for the Indigenous Peoples whose traditional territories lie within it and features prominently in their stories.¹

The Vuntut Gwich'in, Tr'ondëk Hwëch'in, and Na-Cho Nyäk Dun signed their individual land claims and self-government agreements in 1993, the same year that the Council of Yukon First Nations, the Government of Yukon, and the Government of Canada signed the Umbrella Final Agreement (UFA). The individual agreements allowed each YFN to choose designated areas as their settlement lands, divided into Category A (surface and subsurface rights) and Category B (surface rights) lands.² The remainder was designated non-settlement lands that remained subject to the parameters outlined in the UFA's *Chapter 11: Land Use*

¹ Peel Watershed Planning Commission, "Final Recommended Peel Watershed Regional Land Use Plan" (Whitehorse, 2011), 1-1, <https://planyukon.ca/index.php/documents-and-downloads/peel-watershed-planning-commission/plans/frpwlup/424-pwpc-final-rlup-without-maps-compressed/file>.

² "Umbrella Final Agreement" (Whitehorse, 1993), 85, <http://www.eco.gov.yk.ca/pdf/umbrellafinalagreement.pdf>. This page of the document outlines exactly how much each YFN was allocated in Category A and Category B lands. In total, YFNs agreed to 41,439 km² of settlement lands, with 25,899 km² of that being Category A.

Planning. Especially important is the chapter's requirement that the process for developing a regional land use plan will "use knowledge and traditional experience of Yukon Indian Peoples and the knowledge and experience of other residents of the planning region, ensure adequate funding for public participation, and recommend measures to minimize actual and potential land use conflicts throughout the planning region."³ In total, 97.3 percent of the watershed is comprised of non-settlement lands,⁴ with only a small portion of Na-Cho Nyäk Dun's Category A lands in the south and the Teetł'it Gwich'in's designated areas in the north.⁵ Though the UFA itself is non-binding, the YFNs' individual land claim agreements incorporate the same terms as the UFA. Therefore, Chapter 11's parameters are part of the northern YFNs' modern treaties and are protected under the *Constitution Act of 1982*. This in turn makes it a constitutional obligation of the Crown and the Government of Yukon to consult with YFNs regarding development on lands throughout the territory.

In 2004, the Conservative Yukon Government (YG) began exercising recently devolved governmental powers by proposing economic development in the Peel Watershed. This involved the extraction of known deposits of oil, gas, coal, uranium, and other minerals. To fulfill the government's treaty obligations, the Peel Watershed Planning Commission (PWPC) was created to take recommendations from government officials, Yukon residents, and YFNs. Chapter 11, section 6, sub-sections 1-5 of the UFA outline how recommendations are to be presented to all governments involved, which then have multiple opportunities to "approve, reject or propose

³ "Umbrella Final Agreement," 96.

⁴ Sara L Jaremko, "The Peel Watershed Case: Implications for Aboriginal Consultation and Land Use Planning in Alberta," University of Calgary, 2017, 6, <https://cirf.ca/files/cirf/presentation-of-the-peel-watershed-case.pdf>.

⁵ Peel Watershed Planning Commission, "Map 01 - Regional Overview," 2009, https://peel.planyukon.ca/downloads/dmdocuments/SOR_Map_1.pdf. Environment Yukon, "First Nation of Na-Cho Nyak Dun Traditional Territory and R-Blocks," Government of Yukon, 2008, http://www.env.gov.yk.ca/maps/media/uploads/pdf-maps/Nacho-Nyak-Dun_ENV.FN.NND.pdf.

modifications,”⁶ to the plan. The PWPC followed these steps and the YG had several chances to engage in collaborative consultation with YFNs in the proposed development. In 2011, the PWPC released its Final Recommended Land Use Plan based on government and public input, “calling for 55% permanent protection and 25% interim protection to be decided upon in future review plans, with 20% open to roads and industrial development.”⁷ This had been a compromise by the YFNs who originally opposed any development, stating that 100 percent of the region should remain undeveloped so as to maintain the physical and spiritual wellbeing of the region and the Peoples. The YG provided minimal feedback to the PWPC prior to the 2011 release of the Final Recommended Land Use Plan. Instead, it released its own plan on January 20, 2014, suggesting that 71 percent of the region should be open to development.

In response, the YFN of NaCho Nyäk Dun and the conservation groups, Canadian Parks and Wilderness Society and Yukon Conservation Society, filed suit against the YG in territorial court for treaty violations. The complaint relied on the YG’s disregard of the UFA’s Chapter 11, section 6 and its failure to fulfill its constitutional obligation to uphold Indigenous treaty rights. The plaintiffs alleged that due to the YG’s “vague” contributions during the consultation process, YG’s final land use proposal should be disregarded and consultations should be reinstated. The plaintiffs argued that the YG had already been given the chance to contribute, but had remained detached from the process, and therefore should be restricted in its ability to modify the PWPC’s Final Recommended Land Use Plan. The YG held that it had maintained Chapter 11’s treaty agreements, as the land in question was non-settlement land and the Government of Yukon “has the final word” on development within these regions.⁸ Therefore, the YG’s Final Recommended

⁶ “Umbrella Final Agreement.”

⁷ “Supreme Court Rules in Favour of Yukon First Nations in Peel Watershed Dispute,” *CBC News*, December 1, 2017, <https://www.cbc.ca/news/canada/north/peel-watershed-supreme-court-canada-decision-1.4426845>.

⁸ *The First Nation of Nacho Nyäk Dun v. Yukon*, [2014] Y.K.S.C. 69.

Land Use Plan was well within the territorial government's rights to implement, it claimed. This original case, and all subsequent cases, highlighted that the purpose of the proceedings was to "interpret whether the planning process envisioned in the Final Agreements has been followed and to determine the appropriate remedy if it has not." Their purpose was not to discuss the amount of development in the region.⁹

In the *First Nation of Nacho Nyäk Dun v. Yukon*, the Yukon Supreme Court ruled on December 2, 2014 that the YG had breached its treaty obligations. The Court also concluded that the YG should be limited in its ability to modify the final plan as it had ample time to do so before and "instead took over two years to pursue this flawed process, which betrayed the spirit of the Final Agreements and was criticized by both the public and by the Land Use Planning Council."¹⁰ The Court came to its decision based on the legislation regarding modern land claims and the concept *honour of the Crown*, citing the 2010 court case *Little Salmon/Carmacks v. Beckman*¹¹ that discussed the importance of the Crown fulfilling its duty to consult. The Supreme Court of Canada states in *Little Salmon/Carmacks v. Beckman* that "The reconciliation of Aboriginal and non-Aboriginal Canadians in a mutually respectful long-term relationship is the grand purpose of s. 35 of the Constitution Act, 1982. The modern treaties, including those at issue here, attempt to further the objective of reconciliation not only by addressing grievances over the land claims but by creating the legal basis to foster a positive long-term relationship between Aboriginal and non-Aboriginal communities."¹² The Yukon Supreme Court adhered to this precedent in the *Peel Watershed* case.

⁹ First Nation of Nacho Nyäk Dun v. Yukon, [2014] Y.K.S.C. 69.

¹⁰ First Nation of Nacho Nyäk Dun v. Yukon, [2014] Y.K.S.C. 69.

¹¹ Little Salmon/Carmacks is a Northern Tutchone First Nation in the Yukon.

¹² Beckman v. Little Salmon/Carmacks First Nation, [2010] 3 S.C.R. 103 (Can.).

The YG appealed to the Yukon Court of Appeals, arguing that it had not breached the UFA. The YG stated that if the Court were to find that it did not uphold its treaty obligations, the consultation process should revert to a point that would allow it to modify the Final Recommended Land Use Plan before its implementation. The YFN and conservation groups both responded that the seven years of consultation work done by the PWPC was valid and that the YG had had ample time to engage in the process and had chosen not to do so. The Yukon Court of Appeals declared on November 4, 2015 that the YG had breached its treaty obligations, but that the consultation process should resume at an earlier phase when the YG could modify the plan. The Court held that the YG had failed to fulfill its right to modify at this earlier stage and therefore the process should begin from there.¹³

The Yukon Court of Appeals quoted the PWPC's Final Recommended Plan in the Court documents of the 2015 trial, stating that "Society was clearly divided on the matter of landscape preservation and resource development."¹⁴ Not only did YFN feel blindsided by the YG's release of its own final plan that lacked consultation, the sentiment was also felt by non-Indigenous Yukoners. In the article, "Fixing Land Use Planning in the Yukon Before It Really Breaks: A Case Study of the Peel Watershed," authors Kiri Staples, et al. state that the decision-making process of land use planning within the Yukon "has failed to secure the common interest," resulting in many participants feeling that "their voices are no longer being heard in the process."¹⁵ The media highlighted the public's concern with the YG's disregard of the work done by the PWPC, with headlines from the local newspaper, *Yukon News* stating: "Rejection of Peel

¹³ First Nation of Nacho Nyäk Dun v. Yukon, [2014] Y.K.S.C. 69.

¹⁴ First Nation of Nacho Nyäk Dun v. Yukon, [2014] Y.K.S.C. 69, 12. Peel Watershed Planning Commission, "Final Recommended Peel Watershed Regional Land Use Plan." xi.

¹⁵ Kiri Staples et al., "Exploring Human Experience in the North," *Northern Review*, no. 37 (Whitehorse: Yukon College, 1988), <http://journals.sfu.ca/nr/index.php/nr/article/view/278/265>.

Plan Termed ‘a Betrayal’¹⁶ and the *Whitehorse Star* proclaiming: “Peel planners stuck to their guns.”¹⁷ Media sources covered the *Peel Watershed* case extensively, including media outside of Canada¹⁸ and heralded the rulings as a landmark case in which Indigenous Peoples had effectively asserted their rights and a pristine wilderness had narrowly avoided destruction.¹⁹ The slogan, *Protect the Peel*, could readily be seen and heard around Whitehorse, where a number of protests were organized to voice dissatisfaction regarding the YG’s plan for 71 percent development of the region. The issue played prominently in the November 2016 elections, when the Liberal Party used the *Peel Watershed* case in its campaign to condemn the YG’s actions. The Liberals’ win in the territorial election suggested that the Conservative YG had lost favour at least in part owing to its stance in the *Peel Watershed* case.²⁰ On the other hand, government officials and mining industry representatives have voiced concerns that the proposed plan to protect 80 percent of the Peel Watershed has not been a victory for the Yukon, as available lands for resource development in the territory have dwindled to 50 percent, according to the executive director of Yukon Chamber of Mines, Samson Hartland.²¹ In 2016, mining, quarrying, and oil

¹⁶ Chuck Tobin, “Rejection of Peel Plan Termed ‘a Betrayal,’” *The Whitehorse Daily Star*, December 22, 2010, <https://www.whitehorsestar.com/News/rejection-of-peel-plan-termed-a-betrayal>.

¹⁷ John Thompson, “Peel Planners Stick to Their Guns,” *Yukon News*, July 27, 2011, <https://www.yukon-news.com/news/peel-planners-stick-to-their-guns/>.

¹⁸ Tom Clynes, “Vast Yukon Wilderness Protected in Ruling for Native Tribes,” *National Geographic*, December 6, 2017, <https://www.nationalgeographic.com.au/nature/vast-yukon-wilderness-protected-in-ruling-for-native-tribes.aspx>. Dan Levin, “Canada’s Supreme Court Backs Indigenous Rights in Dispute Over Yukon Wilderness,” *New York Times*, December 1, 2017, <https://www.nytimes.com/2017/12/01/world/americas/canada-yukon-indigenous-supreme-court.html>.

¹⁹ James Wilt, “What Does the Peel Watershed Ruling Mean for the Yukon - and Canada?,” *The Narwhal*, December 1, 2017, <https://thenarwhal.ca/what-does-today-s-peel-watershed-ruling-mean-yukon-and-canada/>.

²⁰ Genesee Keevil, “Yukon’s Future: Untested Liberals with No Grand Promises,” *CBC News*, November 8, 2017, <https://www.cbc.ca/news/canada/north/genesee-keevil-yukon-election-opinion-1.3841246>. Canadian Parks and Wilderness Society Yukon Chapter and Yukon Conservation Society, “Voters Make Peel One of the Top Election Issues in 2016,” *Protect the Peel*, 2016, <http://protectpeel.ca/news/voters-make-peel-one-of-the-top-election-issues-in-2016>.

²¹ Chuck Tobin, “Excitement Is Hard to Share, Mines Chamber Says,” *Whitehorse Star*, December 4, 2017, <https://www.whitehorsestar.com/News/excitement-is-hard-to-share-mines-chamber-says>.

and gas extraction accounted for 6.1 percent of businesses in the Yukon, while comprising 18.4 percent of gross revenues for all Yukon businesses in 2016.²²

In the summer of 2017, the *Peel Watershed* case continued as Nacho Nyäk Dun appealed the Yukon Court of Appeal's decision to allow the Government of the Yukon to modify the Final Recommended Land Use Plan. The case, according to Justice Karakatsanis of the Supreme Court of Canada, was to determine "what is the appropriate role of the Court in these proceedings; was Yukon's approval of its plan authorized by s.11.6.3.2 of the Final Agreements; [and] what is the appropriate remedy." The Supreme Court of Canada determined that its role was to assess the not whether or not the Government of the Yukon had violated the Umbrella Final Agreement, but instead was to determine the stage at which the land planning process would resume and whether or not the Government of Yukon would have the ability to modify or reject the plan. The Court then found that the YG's plan breached the UFA and that the planning process would only revert to s.11.6.3.2 in the planning process prescribed in the UFA, where the Government of the Yukon would be limited in its ability to modify the plan.²³ As Sara Jaremko points out, the *Peel Watershed* case set a precedent in the Yukon "with respect to decision-making power under the UFA, specifically the potential for unilateral decision-making under the UFA."²⁴ Thus, in the future, the Government of Yukon cannot ignore the UFA's clear mandate on its duty to consult and share decision making power with Yukoners, including YFNs. Justice Thomas Berger, who had been responsible for the *Berger Inquiry* of the mid-1970s that had halted plans to build a pipeline in the Northwest Territories and Yukon until land claims had been finalized in the region, and who represented the YFN and environmental groups in the *Peel Watershed* case from

²² Yukon Bureau of Statistics, "Yukon Business Survey" (Whitehorse, 2018), http://www.eco.gov.yk.ca/stats/pdf/2017_Business_Survey_Report.pdf.

²³ First Nation of Nacho Nyäk Dun v. Yukon, [2017] 2 S.C.R. 576 (Can.).

²⁴ Jaremko, "The Peel Watershed Case," 28.

2014 to 2017, paraphrased the Supreme Court’s *Peel Watershed* holding: “this is what reconciliation means — you’ve reached an agreement, and now, government of Yukon, you have to observe it.” Justice Berger acknowledged that this idea can take time to implement, as it is a difficult lesson to learn.²⁵ Based on the Supreme Court’s decision, the Final Recommended Land Use Plan is currently being finalized before implementation, and the Government of Yukon has limited ability to recommend changes to the PWPC’s proposed 80 percent protected lands.²⁶

Analysis: Duty to Consult and *Honour of the Crown* in the *Peel Watershed* Case

The *Peel Watershed* decision relied on judicial precedents that upheld the Crown’s duty to consult and to perform diligently. If the Crown or industry wishes to initiate development on Indigenous lands (importantly, in the Yukon this involves both settlement and non-settlement lands), then it must engage in meaningful, collaborative consultation with the Indigenous Peoples who will be affected. To perform diligently in this duty can be explained as the Crown taking “a broad purposive approach to the interpretation of the constitutional obligations” and “act(ing) diligently to fulfill them,” Brian Slattery explains.²⁷

In the *Peel Watershed* case, the Supreme Court of Canada relied on precedent regarding the Crown’s duty to consult with Indigenous Peoples when pursuing development on their traditional territories. Most influential were the cases *Haida Nation v. British Columbia (Minister of Forests)* (2004) and *Beckman v. Little Salmon/Carmacks First Nation* (2010), both Supreme Court of Canada cases. In *Haida v. British Columbia*, the Court clarified and reaffirmed that:

²⁵ CBC News, “Lawyer Thomas Berger on How Yukon’s Peel Watershed ‘Was Saved,’” *CBC News*, February 4, 2018, <https://www.cbc.ca/news/canada/north/thomas-berger-peel-watershed-scoc-1.4517112>.

²⁶ Peel Watershed Planning Commission, “Consultation on the Final Recommended Plan Begins! (Again),” Peel Watershed Planning Commission, 2018, <http://peel.planyukon.ca/index.html>.

²⁷ Brian Slattery, “The Royal Proclamation of 1763 and the Aboriginal Constitution,” in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, ed. Terry Fenge and Jim Aldridge (Quebec: McGill-Queens University Press, 2015), 29-31.

“The government’s duty to consult with Aboriginal peoples and accommodate their interests is grounded in the principle of the *honour of the Crown*, which must be understood generously.” Use of the word *generously* implies liberal interpretation of the constitutional obligations. The Court clarified: “The foundation of the duty in the Crown’s honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.”²⁸ In *Haida v. British Columbia*, the Court held that government’s constitutional duty to uphold treaty rights extends to the provincial government (which could also apply to a territorial government): “Since the duty to consult and accommodate here at issue is grounded in the assertion of Crown sovereignty which pre-dated the Union, the Province took the lands *subject to this duty*.”²⁹ The Haida case has since stood as precedent in a number of court proceedings including the Yukon case *Little Salmon/Carmacks v. Beckman* (2010). In this instance, however, the Court held that the Government of Yukon through its Minister of Energy, Mines, and Resources, David Beckman, had fulfilled its duty to consult when allocating an agricultural land grant to a non-First Nation. Yet, the Court explained in detail the process of consultation that the plaintiff engaged in to fulfill its duty to consult and referenced the UFA’s specific treaty obligations to outline how consultation was satisfied.³⁰ The Court’s clarification here illuminates its interpretation of the duty to consult and provides guidance for the future.

Peel Watershed Case – Citizens Plus or Self-Recognition?

In the *Peel Watershed* case, the Court relied heavily on the treaty rights outlined in the UFA to reach its decision to deny the Government of the Yukon the final word on development in the

²⁸ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 (Can.).

²⁹ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 (Can.). (emphasis added)

³⁰ *Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 S.C.R. 103 (Can.).

region. These treaty rights comprise the “plus” rights that Bill Gallagher discusses in *Resource Rulers* as he outlines the numerous case studies wherein the Crown’s failure to consult led to “a long list of lost resource project opportunities and the toll on Canada’s economy has been enormous.”³¹ The YFNs’ ability to have its treaty rights affirmed through the judicial system has thus increased over time. The protection provided by the UFA also reflects the political atmosphere surrounding Indigenous rights in the 1990s, including the Red Power Movement,³² when the UFA was signed. In 1981, Pierre Elliot Trudeau’s Liberal government had produced the policy statement *In All Fairness*, which proposed treaties as being final. As national public opinion shifted during the decade, YFNs negotiated greater control over their traditional territories, including non-settlement lands, and they achieved a shift in understanding from the UFA as a final agreement to the Agreement representing an *on-going relationship* between YFNs and the Crown. By 2017, Canadians were becoming familiar with Indigenous land disputes and acknowledging the Crown’s obligation to uphold its duties. These “plus” rights have become a prominent aspect of Indigenous-Crown relations.

YFNs’ increased agency in asserting their “plus rights” has also been a function of evolving jurisprudence since the 1982 *Constitution Act*, as the Court’s interpretation of section 35 has developed. Interestingly, in the initial *Peel Watershed* trial in 2014, the Yukon Supreme Court ruled that the YFNs’ “plus” rights outlined in the UFA had been violated. The subsequent cases addressed to which step in the consultation process the Yukon should return, in order to rectify

³¹ Bill Gallagher, *Resource Rulers: Fortune and Folly on Canada’s Road to Resources* (Waterloo: Bill Gallagher, 2011), 2.

³² Alvin M. Josephy, *Red Power: The American Indians’ Fight for Freedom*, eds. Alvin M. Josephy, Joane Nagel, and Troy Johnson (London: Nebraska Press, 1999), 91. The Red Power Movement was a social movement instigated by Indigenous youth that sought self-determination for Native Americans in the United States and became influential in Canada during the 1960s to 1970s.

its actions. The degree to which Indigenous “plus” rights are being recognized has thus steadily increased, with the *Peel Watershed* case being the most recent to move the bar.

In the future, YFNs are likely to rely more heavily on self-recognition (and Coulthard’s “grounded normative theory” generally) for two reasons. First, self-recognition does not depend on the Canadian or territorial governments to recognize its rights. The YFNs took a risk in following the “citizens-plus” rights model. They could have lost their case. The YG’s violation of the UFA demonstrates a broken relationship and the YG’s failure to recognize YFNs’ “plus” rights. When the YG released its own plans in 2011 that disregarded the PWPC, it stated that the UFA granted it the “authority to ‘modify’ the Final Recommended Plan.”³³ This statement demonstrated the YG’s familiarity with the UFA, and that it applied a narrow interpretation of the treaty agreement that benefited itself, rather a liberal construction of the agreement that favoured the YFNs, as required by the Court. While the YG’s engagement in the PWPC’s consultation process could be loosely interpreted as the Crown fulfilling its duty to consult, it hardly complied with the Crown’s duty to perform diligently in fulfilling that duty. As long as YFNs rely on “citizens-plus” theory and engage in the Canadian political and judicial system, they run the risk of losing ground metaphorically, and actually losing their traditional lands. Yet, if YFN want to maintain their land rights in the face of both Crown and other cooperate development initiatives, YFN will have to engage in the “citizens-plus” model to maintain their “plus” rights that allow them agency over their lands.

It should also be noted that originally, the YFNs opposed development within the Peel Watershed; they compromised to support 80 percent protection. Thus, they were forced to conform in order to appease the growing demands within the territory for economic

³³ Jaremko, “The Peel Watershed Case,” 15.

development. Resource development of any kind in the Peel Watershed will alter the landscape, as it is very difficult to confine such activities within an area. Infrastructure and pollution will impact the overall region, no matter how limited the area of resource extraction. This could negatively affect the land, and the physical and spiritual health of the surrounding Indigenous communities. As grounded normative theory, discussed in Chapter Three, affirms, the land is of paramount importance and must be protected. The 20 percent set-aside for development represents a significant loss of land and will affect the spiritual and physical well-being of YFNs. As Indigenous identity is strongly land-based, this loss of land could impact their identity.

As Nadasdy points out, Yukon Indigenous Peoples have had to transform societal structures to engage in the treaty making process to create the UFA. Yet ultimately, the UFA allowed for the “citizens-plus” model to come into fruition and prevent significant development in the Peel Watershed. This raises the second reason that YFNs may rely less on the “citizens-plus” model to achieve their aims in the future: If Canada continues to uphold treaty rights, the need to rely on the “citizens-plus” model may subside, allowing for a greater growth of self-recognition. The *Peel Watershed* case solidifies the acknowledgement of treaty rights in the judicial system. As governments slowly realize the futility of ignoring these rights, Indigenous Peoples can instead look to pursue their individual ideas of self-recognition.

Thus, the success of the “citizens-plus” model may in fact lead to increased efforts toward self-recognition. The development in Indigenous rights during the years between the YFNs presenting their land claims in 1971 and their signing the UFA in 1993 allowed for increased self-recognition and realization of self-governments in the individual final land claims agreements. The final agreements reflect YFN cultural concerns, including environmental protection, as can be seen by Chapter 11’s inclusion of Indigenous voices in planning processes.

These details risk being overlooked with time, but cases like the *Peel Watershed* revalidate the obligations and protections for governments and the public.

Conclusion

A precedent has been set within the Canadian judicial system through several cases that affirm the Crown's duty to consult with diligence. The *Peel Watershed* case not only reaffirms this constitutional obligation, it also asserts the central role of treaty rights within Indigenous-Crown relations and their relevance to northern development initiatives. Due to the unique circumstances surrounding the development of the UFA, YFNs have been able to assert agency throughout the Yukon, including non-settlement lands. This provision of the UFA supports the grounded normative theory that ties traditional Indigenous cultures to the land. Indigenous Peoples will nevertheless have to engage with the growing settler society and conform with state requirements to garner access to certain amenities, such as health care and various technology. This adaptation is best exercised within the "citizens plus" model that allowed YFNs to rely on the Constitution Act and subsequent judicial precedents under Section 35 to demand that Indigenous treaty rights be upheld. By invoking the *honour of the Crown* and their "plus" rights, northern YFNs achieved recognition of their UFA treaty rights.

As development in the Yukon proceeds, the use of land-planning commissions should increase in accordance with the UFA's clear requirement of collaboration in the processes. The *Peel Watershed* case stands as a precedent for future relations between YFNs, the Crown, Government of the Yukon, and all Yukoners. Moving forward, the territorial government must not ignore treaty promises, but rather, share decision-making powers. By avoiding adversarial interactions, YFNs and the Government of Yukon can develop a truly collaborative process, through which the YFNs maintain a meaningful role in decision-making regarding the future of

their traditional lands. As noted in Chapter Five, the current Liberal territorial government is making strides to improve Indigenous-Crown relations by engaging in meaningful consultations. In the Yukon, individual YFN land claims and self-government agreements supported by section 35 of the Constitution Act of 1982, make collaboration a constitutional obligation. This model serves as a model to foster improved Indigenous-Crown relations within Canada.

CONCLUSION

This thesis has treated the history of Indigenous-Crown relations in Canada, to contextualize the Yukon's unique history and the *Peel Watershed* case and decision. Finally, I have offered a comparative analysis of the efficaciousness of two prominent models to pursuing Indigenous Rights. The questions that have guided this research have been: 1) How have evolving government interests shaped Crown policies toward Indigenous Peoples and Indigenous-Crown relations in Canada? 2) How did the burgeoning international human rights movement following WWII and repatriation of Canada's Constitution in 1982 incite Canada's Modern Land Claims Era? 3) How did the Yukon's remoteness affect government interests, Indigenous policies, and Indigenous-Crown relations in the territory? 4) Moving forward, will the "citizens-plus" model or the self-recognition model of pursuing Indigenous rights be more effective in protecting Indigenous land rights and promoting well-being in Indigenous communities in Canada? 5) How does the 2017 *Peel Watershed* case illustrate the Yukon's unique history and the marked change in Indigenous-Crown relations in Canada?

Indigenous Peoples have engaged in diplomatic relations with the Crown with varying levels of agency throughout the history of North American colonization. The French Crown's early diplomatic missions to North America were based on a mutual respect, though the Eurocentric notion of cultural superiority coloured interactions and colonizer policies. Early traders and then colonizers nevertheless relied heavily on Indigenous favour for success. The British Crown established the Department of Indian Affairs in 1755, and appointed officials such as Sir William Johnson, who was knowledgeable and respectful of local Indigenous cultures and relied on this knowledge in his diplomacy. He readily proclaimed the promises of protection that were outlined in the *Royal Proclamation of 1763* to allay the growing concerns of the Indigenous

Peoples as they witnessed the theft of their traditional territories. Through kinship and reciprocity, Britain gained Indigenous allies in wars, first against the French then the Americans. After the War of 1812 ended and Britain and America had established their state borders, Indigenous Peoples found their world invaded by European settlers and controlled through a foreign power with different cultural values. Britain slowly devolved control to the colonies over the coming years and left its responsibilities to the new Canadian Crown, which set its sights on expansion.

In 1870, Canada bought lands from the British-chartered Hudson Bay Company and began pushing west and north to gain lands for the increasingly demanding settler population from Europe. Like the French and British, the Government of Canada found diplomacy more effective than brute force. The Red River Rebellion proved to be expensive and time consuming. To avoid future conflicts, the Canadian Crown relied on the 1763 *Royal Proclamation's* acknowledgement of Indigenous land rights and engaged in the Numbered Treaties. In the southern regions of Canada, treaty officials met Indigenous populations who were starved and greatly weakened by waves of epidemics. Yet the Indigenous communities who negotiated achieved protections of their hunting and fishing rights, for instance. Indigenous leaders exerted less influence on the northern Numbered Treaties. The final treaty of 1922 was written in Ottawa and sent to be signed without changes. Northwestern Indigenous Peoples nevertheless tried to negotiate more favorable terms in Treaty Eleven. Many of them signed only after officials verbally promised them that the treaty would protect their right to hunt and fish. These oral promises, like many other oral promises made by government officials during the Numbered Treaties negotiations, were soon forgotten.

Unaffected by these treaties, the Yukon avoided the aggressive assimilation policies that were enforced in most of Canada. Instead, the Government of Canada encouraged Yukon Indigenous Peoples to continue their traditional lifestyles during the late 1800s and early 1900s. The 1896 gold strike in the Klondike generated the first wave of immigration into the territory, resulting in a large mining settlement around Dawson City in the north. The large settler society warranted a sub-national government; thus, the *Yukon Act of 1898* established a territory. When the gold ran out, the city shrunk to a small town, and only a few small non-Indigenous settlements remained throughout the Yukon.

WWII brought renewed interest from Ottawa, and owing to Alaska's strategic location, a highway was built through the territory to connect Fairbanks with northern Alberta. When the war ended, the large construction-worker population dissipated, but like during the Klondike Gold Rush, they did not all disappear. In 1958, the Klondike Highway was built from Whitehorse to Dawson City, creating more communication and transportation infrastructure that drew Indigenous Peoples to settle along the highways for the conveniences they brought. These roads also allowed greater government control of the Indigenous population, and Ottawa appointed several officials to the territory's Department of Indian Affairs. During this era, many Yukon Indigenous communities began to feel the force of Canada's aggressive assimilation policies.

In Ottawa, however, Parliament was experiencing a change in perspective; officials had come to view the Department of Indian Affairs and its Indigenous policies a failure for having worsened the problems Indigenous Peoples faced. In the 1950s and '60s, the Government of Canada, listened to Indigenous voices and re-evaluated the *Indian Act*. Revisions to previous aggressive assimilation policies included granting Indigenous Peoples the right to vote and raise

money for legal fees. Masked through the promise of equality, the Liberal Trudeau Government's *White Paper, 1969* threatened these gains. The policy evoked such a negative Indigenous response, that not only was it abandoned, but Parliament created the Land Claims Commission in the early '70s. The Yukon First Nations (YFN) were the first Indigenous organization to present a land claim to the commission. For the next twenty years they negotiated terms that reflected advances in Indigenous rights being made in Canadian society. In 1993, the Umbrella Final Agreement (UFA) was signed, which allowed for individual YFN self-government and land claims agreements. Importantly, by the 1990s, Parliament had adopted the understanding that treaties were on-going processes, not final agreements.

Meanwhile, the repatriation of Canada's Constitution in 1982, and its Section 35, which guaranteed treaty and Indigenous rights, opened a new era in Indigenous rights in Canada. Changes to Indigenous policy reflected Indigenous Peoples working through the judicial system to force government to uphold the Crown's duty to acknowledge Indigenous land and treaty rights. Landmark cases have included *Haida v. British Columbia* (2004), which clarified the Crown's duty to consult and to do so diligently, a responsibility that dates back to the *Royal Proclamation of 1763*. The 2017 *Peel Watershed* ruling that prevented the Government of Yukon from ignoring the Peel Watershed Planning Commission's Final Recommended Plan followed years of Indigenous activism that have transformed government norms to acknowledge Indigenous rights with greater consistency.

When the "citizen's-plus" model of Indigenous activism was first introduced in 1966, it may have seemed radical, given that Indigenous Peoples had been treated as "citizens-minus" since the inception of the Canadian Crown. As First Nations, Metis, and Inuit voices grew more effective in speaking out against aggressive assimilation policies, however, they accessed the

same rights as other Canadian citizens, while maintaining their Indigenous rights. More recently, as Indigenous treaty and land rights have continued to evolve, new ideas have emerged.

“Citizens-plus” has become well affirmed in the judicial system, in land claims and hunting and fishing rights for example. Some scholars, however, many of them Indigenous, have begun proposing other models that rely on self-recognition, rather than seeking recognition through national and subnational legal and political systems. These models look to rebuild Indigenous communities, increasing their spiritual and physical wellbeing through a reconnection with the land and traditional cultures. The *Peel Watershed* case exemplifies the “citizens-plus” model in action, as the plaintiffs went through the judicial system, and relied on the additional rights of the UFA to prevent the Government of Yukon from disregarding its duty to consult with YFN.

As the *Peel Watershed* case demonstrates, the governments of Canada are still being reminded of their constitutional obligation to uphold treaty and land rights. This shows that Indigenous Peoples must continue to rely on the “citizens-plus” model to maintain agency over their traditional territories. Yet, this model has not ensured First Nations’, Metis’, and Inuit’s physical and spiritual well-being. If the Crown can be relied on to uphold its honour to consult and to do so diligently, then Indigenous Peoples can instead focus on other means of strengthening Indigenous communities through various forms of self-recognition. Indigenous Peoples’ dependency on the state, developed through centuries of colonial policies, makes total rejection of settler society difficult for Indigenous communities. Well-being could lie in maintaining the “citizens-plus” model that allows Indigenous Peoples access to the rights, privileges and amenities associated with Canadian citizenship, while maintaining their additional treaty rights, as they work toward a stronger connection to the land and reinstating traditional societal structures in Indigenous communities in accordance with self-recognition. The struggle

for Canada will be in allowing Indigenous Peoples the space for self-recognition, while respecting and celebrating the differences not only between the westernized state systems, but also among Indigenous communities. If Canada, and specifically the Yukon, holds true to its commitment to improve Indigenous-Crown relations, then it will have to reflect on past wrongs and look for sustainable, cooperative solutions for a better future in which Indigenous Peoples enjoy the same agency that all societies desire.

BIBLIOGRAPHY

- Abel, Kerry M. *Drum Songs: Glimpses of Dene History*. McGill-Queen's University Press, 1993.
- Aillo, Rachel. "Can PM Trudeau Keep Drinkable Water Promise to First Nations?" *CTV News*. December 28, 2017. <https://www.ctvnews.ca/politics/can-pm-trudeau-keep-drinkable-water-promise-to-first-nations-1.3736954>.
- Alcantara, Christopher. *Negotiating the Deal: Comprehensive Land Claims Agreements in Canada*. Toronto: University of Toronto Press, 2013.
- Aldridge, Jim. "The 1998 Nisga'a Treaty." In *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, edited by Terry Fenge and Jim Aldridge, 138–52. McGill-Queens University Press, 2015.
- Alfred, Taiaiake. *Wasase: Indigenous Pathways of Action and Freedom*. Peterborough: Broadview Press, 2005.
- Allen, Robert S. "The British Indian Department and the Frontier in North America, 1755-1830." *Canadian Historic Sites: Occasional Papers in Archaeology and History/Lieux Historiques Canadiens: Cahiers d'archéologies et d'histoire* 14 (1975).
- Anaya, S. James. *Indigenous Peoples in International Law*. 2nd ed. New York: Oxford University Press, 2004.
- Banner, Stuart. "British Columbia: Terra Nullius as Kindness." In *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska*, 195 to 230. London: Harvard University Press, 2007.
- Barber, Lloyd. "Commissioner on Indian Claims Commissaire Aux Revendications Des Indiens." Ottawa: Minister of Supply Services, Canada, 1977. http://sclaimswp.bryan-schwartz.com/wp-content/uploads/images/stories/specific_claims_docs/03-ICC_CRI_Docs/TheBarberReport1977.pdf.
- Barrett, Sean, and Charles Franks. "HBC Heritage — Text of HBC's Royal Charter." Hudson Bay Company History Foundation, 2016. <http://www.hbcheritage.ca/things/artifacts/the-charter-and-text>.
- Barry, Brian. *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Wiley, 2013. https://books.google.com/books/about/Culture_and_Equality.html?id=9pEnYL1rZp0C&printsec=frontcover&source=kp_read_button#v=onepage&q&f=false.
- Bellrichard, Chantelle. "RCMP, Wet'suwet'en Reach Tentative Deal to Let Gas Company Workers Through." *CBC News*. January 9, 2019. <https://www.cbc.ca/news/indigenous/unistoten-coastal-gaslink-rcmp-injunction-1.4971860>.
- Betasamosake-Simpson, Leanna. *As We Have Always Done: Indigenous Freedom through Radical Resistance*. Minneapolis: University of Minnesota, 2017.
- Boreal Songbird Initiative. "Indigenous Communities in Canada's Boreal Forest," 2015. <https://www.borealbirds.org/indigenous-communities-canada-boreal-forest>.
- Brockman, Alex. "Ottawa to Apologize for Forced Relocation of Ahiarmiut in Nunavut." *CBC News*. January 16, 2019. <https://www.cbc.ca/news/canada/north/federal-government-apology-ahiarmit-forced-relocation-1.4980762>.
- Cairns, Alan C. *Citizens Plus: Aboriginal Peoples and the Canadian State*. UBC Press, 2000.
- Cairns, Alan C., S M Jamieson, K Lysyk, M A Tremblay, F G Vallee, and J Ryan. "A Survey of the Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies." Ottawa: Government of Canada, 1966. <http://caid.ca/HawRep1a1966.pdf>.
- Canada, Statistics. "Population of Canada, by Province, Census Dates, 1851 to 1976." Ottawa,

2019. https://www150.statcan.gc.ca/n1/pub/11-516-x/sectiona/A2_14-eng.csv.
- Canadian Geographic. "Historical Maps," 2006. <http://web.ncf.ca/ex591/CG/1825.html>.
- Canadian Parks and Wilderness Society Yukon Chapter, and Yukon Conservation Society. "Voters Make Peel One of the Top Election Issues in 2016." Protect the Peel, 2016. <http://protectpeel.ca/news/voters-make-peel-one-of-the-top-election-issues-in-2016>.
- Cardinal, Harold. *The Unjust Society*. Vancouver: Douglas & McIntyre, 1969.
- Carter, Sarah. *Aboriginal People and Colonizers of Western Canada to 1900*. Edited by Craig Heron. Toronto: University of Toronto Press, 2003.
- Case, Danny. "Letter to Concerned Kaska Citizens." Lower Post, 2019. <https://kaskadenacouncil.com/download/kdc-response-to-kaska-citizens-re-kaska-dena-council-v-yukon-government-of-2019-yksc-13/?wpdmdl=4577&refresh=5c97abd68a7d81553443798>.
- Castillo, Victoria E. "Fort Selkirk: Early Contact Period Interaction Between the Northern Tutchone and the Hudson's Bay Company in Yukon." University of Alberta, 2012.
- CBC News. "Duncan Campbell Scott Plaque Now Includes His Past Creating Residential Schools." *CBC News*. November 2, 2015. <https://www.cbc.ca/news/canada/ottawa/duncan-campbell-scott-plaque-updated-1.3299062>.
- . "Inuit Get Federal Apology for Forced Relocation." *CBC News*. August 18, 2010. <https://www.cbc.ca/news/canada/north/inuit-get-federal-apology-for-forced-relocation-1.897468>.
- . "Lawyer Thomas Berger on How Yukon's Peel Watershed 'Was Saved.'" *CBC News*. February 4, 2018. <https://www.cbc.ca/news/canada/north/thomas-berger-peel-watershed-scoc-1.4517112>.
- . "Supreme Court Rules in Favour of Yukon First Nations in Peel Watershed Dispute." *CBC News*. December 1, 2017. <https://www.cbc.ca/news/canada/north/peel-watershed-supreme-court-canada-decision-1.4426845>.
- . "The Oka Legacy: Oka Timeline: An Unresolved Land Claim Hundreds of Years in the Making." *CBC News*. Accessed November 20, 2017. <http://www.cbc.ca/firsthand/features/oka-timeline-an-unresolved-land-claim-hundreds-of-years-in-the-making>.
- . "Timeline: Key Events in the History of the Trans Mountain Pipeline." *CBC News*. October 3, 2018. <https://www.cbc.ca/news/canada/calgary/timeline-key-dates-history-trans-mountain-pipeline-1.4849370>.
- . "'We Are Sorry': Ottawa Apologizes to Manitoba's Sayisi Dene for Forced Relocation." *CBC News*. August 16, 2016. <https://www.cbc.ca/news/canada/manitoba/sayisi-dene-apology-1.3723569>.
- . "Yukon Government Puts a Lid on Oil and Gas Interest in Territory." *CBC News*. November 24, 2017. <https://www.cbc.ca/news/canada/north/yukon-oil-gas-request-postings-cancelled-1.4417211>.
- Chinook Multimedia. "1919 - Frederick Loft and the League of Indians." *Canada History*, 2018. <https://canadianhistory.ca/natives/timeline/1910s/1919-frederick-loft-and-the-league-of-indians>.
- Clarke, Chris, and K'anacha Group. *Tr'ehuhch'in Nawtr'udaha: Finding Our Way Home*. Edited by Chris Clarke, K'anacha Group, and Sharon Moore. Dawson City: Tr'ondek Hwech'in, 2009.
- Clynes, Tom. "Vast Yukon Wilderness Protected in Ruling for Native Tribes." *National*

- Geographic*, December 6, 2017. <https://www.nationalgeographic.com.au/nature/vast-yukon-wilderness-protected-in-ruling-for-native-tribes.aspx>.
- Coates, Kenneth. *A Northern Yukon: A History*. Victoria: Parks Canada, 1979.
- . “Best Left As Indians: The Federal Government and the Indians of the Yukon, 1894 to 1950.” *The Canadian Journal of Native Studies* 2, no. 4 (1984): 179–204. <http://www3.brandonu.ca/cjns/4.2/coates.pdf>.
- . *Canada’s Colonies: A History of the Yukon and Northwest Territories*. Toronto: James Lorimer & Company LTD., Publishers, 1985.
- . “First Nations and the Yukon Territorial Government: Towards a New Relationship.” Whitehorse, 1994. http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1991-1-41-98-eng.pdf.
- . “Upsetting the Rhythms: The Federal Government and Native Communities in the Yukon Territory, 1945 to 1973.” In *Out of the Background: Readings on Canadian Native History*, edited by Kenneth S. Coates and Robin Fisher, 294. Toronto: Copp Clark Pitman, 1988.
- Coates, Kenneth, and William R. Morrison. *Land of the Midnight Sun: A History of the Yukon*. 3rd ed. Montreal: McGill-Queen’s University Press, 2017.
- Coon Come, Matthew. “Cree Experience with Treaty Implementation.” In *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, edited by Terry Fenge and Jim Aldridge, 153–72. Montreal: McGill-Queens University Press, 2015.
- Coulthard, Glen Sean. *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota, 2009.
- Council of Yukon First Nations. “History of Land Claims,” 2019. <https://cyfn.ca/history/history-of-land-claims/>.
- . *Part One - Strangers in Our Own Land*. Whitehorse: Northern Native Broadcasting Yukon, 1998. <https://vimeo.com/123661676>.
- . *Part Three - From Yesterday to Tomorrow*. Whitehorse: Northern Native Broadcasting Yukon, 1998.
- . “Services,” 2019. <https://cyfn.ca/services/>.
- Crowe, Keith. “Comprehensive Land Claims: Modern Treaties.” *The Canadian Encyclopedia*. Historica Canada, 2018. <https://www.thecanadianencyclopedia.ca/en/article/comprehensive-land-claims-modern-treaties>.
- Crown-Indigenous Relations and Northern Affairs. “Canada’s Arctic Policy Framework: Discussion Guide,” 2017. <https://www.rcaanc-cirnac.gc.ca/eng/1503687877293/1537887905065>.
- . “Crown-Indigenous Relations and Northern Affairs Canada.” Government of Canada, 2019. <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs.html>.
- . “FAQs – Yukon Devolution,” 2013. <https://www.rcaanc-cirnac.gc.ca/eng/1352471189145/1537369386562>.
- . “Truth and Reconciliation Commission of Canada,” 2019. <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>.
- Cruikshank, David A. “Calder Case.” *Canadian Encyclopedia*. Historica Canada, 2006. <https://www.thecanadianencyclopedia.ca/en/article/calder-case>.
- Cruikshank, Julie. “Negotiating with Narrative: Establishing Cultural Identity at the Yukon International.” *Source: American Anthropologist*. Vol. 99, 1997. <https://www.jstor.org/stable/682133>.

- . *Reading Voices: Oral and Written Interpretations of the Yukon's Past*. Vancouver/Toronto: Douglas & McIntyre, 1991.
- . “The Gravel Magnet: Some Social Impacts of the Alaska Highway on Yukon Indians.” In *The Alaska Highway: Papers of the 40th Anniversary Symposium*, edited by Kenneth Coates, 172–87. Canada: University of British Columbia Press, 1985.
- CTV News. *Justin Trudeau Holds Town Hall in Kamloops, B.C. amid Pipeline Dispute*. Canada: CTV News, 2019. https://www.youtube.com/watch?v=B_nl9CUd75E.
- Department of Indian Affairs. “Dominion of Canada Annual Report of the Department of Indian Affairs for the Year Ended 31st December, 1880.” Ottawa, 1881. <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=1653>.
- . “Dominion of Canada Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1903.” Ottawa, 1904. <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=16066>.
- . “Dominion of Canada Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1936.” Ottawa, 1936. <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=32617>.
- Department of Justice. “Constitution Acts, 1867 to 1982.” Government of Canada, 2019. <https://laws-lois.justice.gc.ca/eng/const/page-16.html#docCont>.
- . “Jobs and Growth Act.” Government of Canada. Ottawa: Government of Canada, 2019. https://laws.justice.gc.ca/eng/AnnualStatutes/2012_31/.
- . “Yukon First Nations Self-Government Act.” Government of Canada, 2003. <https://laws-lois.justice.gc.ca/eng/acts/y-2.6/20030513/P1TT3xt3.html>.
- Derworiz, Colette E. “Federal Department of Indigenous and Northern Affairs.” *The Canadian Encyclopedia*. Historica Canada, 2008. <https://www.thecanadianencyclopedia.ca/en/article/aboriginal-affairs-and-northern-development-canada>.
- Dhillon, Jaskiran. *Prairie Rising: Indigenous Youth, Decolonization, and the Politics of Intervention*. Toronto: University of Toronto Press, 2017.
- Donihee, John J.P., and Nicole Peterson. “Ross River Dena Council v. Yukon: The Duty To Consult And Wildlife Management - Environment - Canada.” *Willms and Shier Environmental Lawyers*, 2015. <http://www.mondaq.com/canada/x/452214/Environmental+Law/Ross+River+Dena+Council+V+Yukon+The+Duty+To+Consult+And+Wildlife+Management>.
- Donnelly, Michael. “The Lure of Gold in Alberta’s History: Part II.” RETROActive - Exploring Alberta’s Past, 2015. <https://albertashistoricplaces.wordpress.com/2018/11/29/the-lure-of-gold-in-albertas-history-part-ii/>.
- Environment Yukon. “First Nation of Na-Cho Nyak Dun Traditional Territory and R-Blocks.” Government of Yukon, 2008. http://www.env.gov.yk.ca/maps/media/uploads/pdf-maps/Nacho-Nyak-Dun_ENV.FN.NND.pdf.
- . “Traditional Territories of Yukon First Nations, and Settlement Areas of Inuvialuit and Teetlit Gwich’in.” Government of Yukon, 2019. <http://www.env.gov.yk.ca/maps/view/detail/1/10/448>.
- Fenge, Terry. “Negotiation and Implementation of Modern Treaties between Aboriginal Peoples and the Crown in Right of Canada.” In *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, edited by Terry Fenge and Jim Aldridge, 105–

37. Montreal: McGill-Queens University Press, 2015.
- Fenge, Terry, and Jim Aldridge. "In Conclusion." In *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, edited by Jim Aldridge and Terry Fenge, 194–206. Montreal: McGill-Queen's University Press, 2015.
- First Nations of Nacho Nyak Dun v. Yukon (2017).
- Flaherty, James M. "The Road to Balance: Creating Jobs and Opportunities." Ottawa, 2014.
https://www.canada.ca/content/dam/canada/news/migration/web/Dha.do-fileName-3688_20160531091639_en_speech-discours-e.pdf.
- Fumoleau, Rene. *As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870 - 1939*. Calgary: University of Calgary Press, 2004.
- Gadacz, Rene R. "Potlatch." *The Canadian Encyclopedia*. Historica Canada, 2006.
<https://www.thecanadianencyclopedia.ca/en/article/potlatch>.
- . "Sun Dance." *The Canadian Encyclopedia*. Historica Canada, 2006.
<https://www.thecanadianencyclopedia.ca/en/article/sun-dance>.
- Gallagher, Bill. *Resource Rulers: Fortune and Folly on Canada's Road to Resources*. Waterloo: Bill Gallagher, 2011.
- Gaudry, Adam. "Métis." *The Canadian Encyclopedia*. Historica Canada, 2016.
<https://www.thecanadianencyclopedia.ca/en/article/metis>.
- George III. "The Royal Proclamation of 7 October 1763." In *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, edited by Terry Fenge and Jim Aldridge, 201–6. Montreal: McGill-Queen's University Press, 2015.
- Government of Canada. "Budget 2019: Chapter 3 - Advancing Reconciliation." Ottawa, 2019.
<https://www.budget.gc.ca/2019/docs/plan/chap-03-en.html#Core-Governance-Support-for-First-Nations>.
- Government of Yukon. Cooperation in Governance Act (2005).
<http://www.gov.yk.ca/legislation/acts/coopgo.pdf>.
- . "Porcupine River - LaPierre House." Sights and Sites of Yukon, 2019.
<https://sightsandsites.ca/rivers/site/lapierre-house>.
- . "Porcupine River - Rampart House." Sights and Sites of Yukon, 2019.
<https://sightsandsites.ca/rivers/site/rampart-house>.
- . "The Klondike Gold Rush: Journey's End." Yukon Archives, 2009.
<http://tc.gov.yk.ca/archives/klondike/en/journey.html>.
- . "Yukon Forum," 2019. <https://yukon.ca/en/your-government/find-out-what-government-doing/yukon-forum>.
- . "Yukon Today," 2017. <http://www.gov.yk.ca/aboutyukon/yukontoday.html>.
- Hanson, Eric. "Constitution Act, 1982 Section 35." First Nations and Indigenous Studies University of British Columbia, 2009.
http://indigenousfoundations.arts.ubc.ca/constitution_act_1982_section_35/.
- Hanson, Erin. "The Residential School System." First Nations and Indigenous Studies - The University of British Columbia, 2009.
https://indigenousfoundations.arts.ubc.ca/the_residential_school_system/.
- Haudenosaunee Confederacy. "Government," 2019.
<https://www.haudenosauneeconfederacy.com/government/>.
- Henderson, William B. "Canada's Indian Reserves: The Usufruct in Our Constitution." *Ottawa Law Review* 12 (1980): 167–94.
- Human Rights Watch. "Canada's Obligation to End the First Nations Water Crisis," 2016.

- <https://www.hrw.org/report/2016/06/07/make-it-safe/canadas-obligation-end-first-nations-water-crisis>.
- Indigenous and Northern Affairs Canada. "People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples." Ottawa, 1996. <https://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637>.
- Indigenous Services Canada. "February 2019 Progress Update on Long-Term Drinking Water Advisories on Public Systems on Reserve." Government of Canada, 2019. <https://www.canada.ca/en/indigenous-services-canada/news/2019/03/february-2019-progress-update-on-long-term-drinking-water-advisories-on-public-systems-on-reserve.html>.
- Irwin, Robert. "Duty to Consult." *The Canadian Encyclopedia*. Historica Canada, 2018. <https://www.thecanadianencyclopedia.ca/en/article/duty-to-consult>.
- Jaremko, Sara L. "The Peel Watershed Case: Implications for Aboriginal Consultation and Land Use Planning in Alberta." University of Calgary, 2017. <https://cirl.ca/files/cirl/presentation-of-the-peel-watershed-case.pdf>.
- Johnson, Bruce Elliot, and Barbara Alice Mann. *Encyclopedia of the Haudenosaunee (Iroquois Confederacy)*. Westport: Greenwood Press, 2000.
- Johnson, William. *The Papers of Sir William Johnson*. Edited by James Sullivan. Toronto: University of the State of New York, 1921.
- Josephy, Alvin M. *Red Power: The American Indians' Fight for Freedom*. Edited by Alvin M. Josephy, Joane Nagel, and Troy Johnson. London: Nebraska Press, 1999.
- Kawaja, Cheryl. "Yukon Gov't, First Nations Agree to Roadmap on Government Relations." *CBC News*. October 2, 2017. <https://www.cbc.ca/news/canada/north/yukon-first-nations-forum-action-plan-1.4316362>.
- Keevil, Genesee. "Yukon's Future: Untested Liberals with No Grand Promises." *CBC News*. November 8, 2017. <https://www.cbc.ca/news/canada/north/genesee-keevil-yukon-election-opinion-1.3841246>.
- Lagace, Naithan, and Niigaanwewidam James Sinclair. "The White Paper, 1969." *The Canadian Encyclopedia*. Historica Canada, 2015. <https://www.thecanadianencyclopedia.ca/en/article/the-white-paper-1969>.
- Leclercq, Chrestien. *New Relation of Gaspesia: With the Customs and Religion of the Gaspesian Indians*. Toronto: Champlain Society, 1910.
- Legros, Dominique. "Oral History as History: Tutchone Athapaskan in the Period 1840-1920." Whitehorse, 2007. <https://tc.beta.gov.yk.ca/sites/default/files/legros-tutchone-athapaskan-part1-2007.pdf>.
- Leslie, John F. "The Indian Act: An Historical Perspective." *Canadian Parliamentary Review* 25, no. 2 (2002): 23–27.
- Levin, Dan. "Canada's Supreme Court Backs Indigenous Rights in Dispute Over Yukon Wilderness." *New York Times*, December 1, 2017. <https://www.nytimes.com/2017/12/01/world/americas/canada-yukon-indigenous-supreme-court.html>.
- Liberal Party of Canada. "Real Change," 2015. <https://www.liberal.ca/realchange/>.
- Malcolmson, Patrick, Richard Myers, Gerald Baier, and Thomas M.J. Bateman. *The Canadian Regime: An Introduction to Parliamentary Government in Canada*. Sixth. North York: University of Toronto Press, 2016.
- Manuel, Arthur, and Grand Chief Ronald Derrickson. *Unsettling Canada: A National Wake-Up*

- Call. Toronto: Between the Lines, 2015.
- Marshall, Tabitha. "Elijah Harper." *The Canadian Encyclopedia*. Historica Canada, 2017. http://www.thecanadianencyclopedia.ca/en/article/elijah-harper/#h3_jump_2.
- McBeath, Jerry. "Changing Forms of Governance in the North." In *Globalization of the Circumpolar North*, 91–118. Fairbanks: University of Alaska Press, 2010.
- McClellan, Catherine, Lucie Birckel, Robert Bringham, James A. Fall, Carol McCarthy, and Janice R. Sheppard. *A History of the Yukon Indians: Part of Our Land, Part of Our Water*. Vancouver: Douglas & McIntyre, 1987.
- McDougall, Robert L. "Duncan Campbell Scott." *The Canadian Encyclopedia*, 2008. <https://www.thecanadianencyclopedia.ca/en/article/duncan-campbell-scott>.
- . "Duncan Campbell Scott." *The Canadian Encyclopedia*. Historica Canada, 2008. <https://www.thecanadianencyclopedia.ca/en/article/duncan-campbell-scott>.
- McWhinney, Edward Watson. "Sovereignty." *The Canadian Encyclopedia*. Historica Canada, 2018. <https://www.thecanadianencyclopedia.ca/en/article/sovereignty>.
- Miller, J.R. "Canada's Historic Treaties." In *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, edited by Terry Fenge and Jim Aldridge, 81–104. Quebec: McGill-Queens University Press, 2015.
- . *Compact, Contract, Covenant: Aboriginal Treaty Making in Canada*. Toronto: University of Toronto Press, 2009.
- Milloy, John S. *A National Crime: The Canadian Government and the Residential School System: 1879 to 1986*. Winnipeg: The University of Manitoba Press, 1999.
- Minister of Indian Affairs and Northern Development. "Yukon Northern Affairs Program Devolution Transfer Agreement." Ottawa, 2001. <https://www.rcaanc-cirnac.gc.ca/eng/1352470994098/1535467403471>.
- Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians. "Building the Future - Yukon First Nation Self-Government." Ottawa: Government of Canada, Minister of Public Works and Government Services Canada, 2008. https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-YT/STAGING/texte-text/pubs-btf-PDF_1316213023092_eng.pdf.
- . "Canada's Northern Strategy: Our North, Our Heritage, Our Future." Ottawa, 2009.
- Minister of Justice. Yukon Act (2002). <https://laws-lois.justice.gc.ca/PDF/Y-2.01.pdf>.
- Moran, Ry. "Truth and Reconciliation Commission." *The Canadian Encyclopedia*. Historica Canada, 2015. <https://www.thecanadianencyclopedia.ca/en/article/truth-and-reconciliation-commission>.
- Morrison, William R. *Showing the Flag: The Mounted Police and Canadian Sovereignty in the North, 1894-1925*. Vancouver: University of British Columbia Press, 1985.
- Nadasdy, Paul. *Sovereignty's Entailments: First Nation State Formation in the Yukon*. Toronto: University of Toronto Press, 2017.
- National Centre for Truth and Reconciliation. "Truth and Reconciliation Commission of Canada: Calls to Action." Winnipeg, 2012. <https://static1.squarespace.com/static/5ac510114611a0bcce082fac/t/5b92b141f950b758a9a5b2f2/1536340329039/TRC+Calls+to+Action+Pocket+booklet+.pdf>.
- National Inquiry into Missing and Murdered Indigenous Women and Girls. "Our Women and Our Girls Are Sacred," 2019. <http://www.mmiwg-ffada.ca/>.
- Natural Resource Canada. "Canada - Yukon Map." Population Data.net, 2016. <https://en.populationdata.net/maps/canada-yukon/>.

- Office of the Prime Minister of Canada. "The Canadian Ministry." Government of Canada, 2015. <https://web.archive.org/web/20131031184302/http://www.pm.gc.ca/eng/ministers>.
- Olynyk, John, and Keith Bergner. "Update on Land Claims and Devolution in the Yukon and the Northwest Territories," 2002. <https://www.lawsonlundell.com/pp/news-360.pdf?36750>.
- Peel Watershed Planning Commission. "Consultation on the Final Recommended Plan Begins! (Again)." Peel Watershed Planning Commission, 2018. <http://peel.planyukon.ca/index.html>.
- . "Final Recommended Peel Watershed Regional Land Use Plan." Whitehorse, 2011. <https://planyukon.ca/index.php/documents-and-downloads/peel-watershed-planning-commission/plans/frpwlup/424-pwpc-final-rlup-without-maps-compressed/file>.
- . "Map 01 - Regional Overview," 2009. https://peel.planyukon.ca/downloads/dmdocuments/SOR_Map_1.pdf.
- Peers, Laura. *The Ojibway of Western Canada, 1780-1870*. Winnipeg: University of Manitoba Press, 1994.
- Penikett, Tony. "'Indigenous Chiefs, Regional Legislators, and Nation States: Who Rules the Arctic in the 21st Century?' - Keynote Address by Tony Penikett, Former Premier of the Yukon." University College London, 2017. <https://www.ucl.ac.uk/global-governance/events/2017/oct/indigenous-chiefs-regional-legislators-and-nation-states-who-rules-arctic-21st>.
- Ray, Arthur. *The Canadian Fur Trade in the Industrial Age*. Toronto: University of Toronto Press, 1990.
- Roache, Trina. "Top 5 Indigenous Issues All Canadians Should Care About." *APTN News*. October 17, 2015. <https://aptnnews.ca/2015/10/17/top-5-indigenous-issues-all-canadians-should-care-about/>.
- Rosenberg, Chaim M. *Losing America, Conquering India: Lord Cornwallis and the Remaking of the British Empire*. Jefferson: McFarland & Company, Inc., 2017.
- Royal Canadian Mounted Police. "Historically Relevant Dates to the RCMP." Government of Canada, 2016. <http://www.rcmp-grc.gc.ca/en/historically-relevant-dates-rcmp>.
- Rudyk, Mike. "Yukon First Nations Anticipate Windfall from Land Claim Loan Forgiveness and Reimbursement." *CBC News*. March 22, 2019. <https://www.cbc.ca/news/canada/north/yukon-land-claim-debt-forgiveness-1.5066994>.
- Sheffield, R. Scott. "Indigenous Peoples and the World Wars." *The Canadian Encyclopedia*. Historica Canada, 2018. <https://www.thecanadianencyclopedia.ca/en/article/indigenous-peoples-and-the-world-wars>.
- Slattery, Brian. "The Royal Proclamation of 1763 and the Aboriginal Constitution." In *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*, edited by Terry Fenge and Jim Aldridge, 10–32. Quebec: McGill-Queens University Press, 2015.
- Smith, Donald B. "Deskaheh." *The Canadian Encyclopedia*. Historica Canada, 2006. <https://www.thecanadianencyclopedia.ca/en/article/levi-general>.
- Stanley, George. "Louis Riel." *The Canadian Encyclopedia*. Historica Canada, 2018. <https://www.thecanadianencyclopedia.ca/en/article/louis-riel>.
- Staples, Kiri, Manuel Chávez-Ortiz, M.J. Barrett, and Douglas Clark. "Exploring Human Experience in the North." *Northern Review*, no. 37 (Whitehorse: Yukon College, October 8, 1988). <http://journals.sfu.ca/nr/index.php/nr/article/view/278/265>.
- Strong, Walter. "Mackenzie Valley Pipeline Officially One for the History Books." *CBC News*. December 28, 2017. <https://www.cbc.ca/news/canada/north/mackenzie-valley-gas-project->

- no-more-1.4465997.
- Surgeon General of Public Health and Marine-Hospital Services of the United States. "Public Health Reports." Washington, 1910.
https://books.google.com/books?id=DIIdIAQAAIAAJ&pg=PA584&lpg=PA584&dq=population+of+yukon+%221910%22&source=bl&ots=_ydwo5VNNB&sig=ACfU3U2AJi9BAfVGGQJiqBjSTAfIWyar7MA&hl=en&sa=X&ved=2ahUKEwj29v-n647hAhUJrZ4KHV51B00Q6AEwFnoECAMQAQ#v=onepage&q=population%2520of%25.
- Sutherland, Stuart R.J. "Treaty of Utrecht." *The Canadian Encyclopedia*. Historica Canada, 2006. <https://www.thecanadianencyclopedia.ca/en/article/treaty-of-utrecht>.
- Ta'an Kwäch'än Council. "Ta'an Kwäch'än." Assembly of First Nations Yukon Region. Accessed March 29, 2019. <http://afnyukon.ca/taan-kwachan-council/>.
- Team ReconciliAction YEG. "Case Briefs: Beckman v Little Salmon/Carmacks First Nation." Alberta: Faculty of Law - University of Alberta, 2018.
<https://ualbertalaw.typepad.com/faculty/2018/10/case-briefs-beckman-v-little-salmoncarmacks-first-nation.html>.
- Teslin Tlingit Council. "Our History," 2019. <http://www.ttc-teslin.com/our-history.html>.
- The University of British Columbia. "Aboriginal Treaties," 2019.
<http://guides.library.ubc.ca/c.php?g=699374&p=4965964>.
- Thompson, John. "Peel Planners Stick to Their Guns." *Yukon News*. July 27, 2011.
<https://www.yukon-news.com/news/peel-planners-stick-to-their-guns/>.
- Titley, Brian. *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada*. Canada: University of British Columbia Press, 1986.
- . *The Indian Commissioners: Agents of the State and Indian Policy in Canada's Prairie West, 1873-1932*. Edmonton: The University of Alberta Press, 2009.
- Tobin, Chuck. "Excitement Is Hard to Share, Mines Chamber Says." *Whitehorse Star*. December 4, 2017. <https://www.whitehorsestar.com/News/excitement-is-hard-to-share-mines-chamber-says>.
- . "Rejection of Peel Plan Termed 'a Betrayal.'" *The Whitehorse Daily Star*. December 22, 2010. <https://www.whitehorsestar.com/News/rejection-of-peel-plan-termed-a-betrayal>.
- Trudel, Marcel. "Donnacona." *Dictionary of Canadian Biography, Vol. 1*. University of Toronto/Université Laval, 2003. http://www.biographi.ca/en/bio/donnacona_1E.html.
- Truth and Reconciliation Commission of Canada. "Honouring the Truth, Reconciling for the Future The Truth and Reconciliation Commission of Canada," 2015.
http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf.
- Tully, James. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press, 1995.
- Turner, Dale A. "This Is Not a Peace Pipe: Towards an Understanding of Aboriginal Sovereignty." Montreal: McGill University Press, 1997.
http://digitool.library.mcgill.ca/R/?func=dbin-jump-full&object_id=35637&local_base=GEN01-MCG02.
- "Umbrella Final Agreement." Whitehorse, 1993.
<http://www.eco.gov.yk.ca/pdf/umbrellafinalagreement.pdf>.
- Waldron, Jeremy. "Minority Cultures and the Cosmopolitan Alternative." In *The Rights of Minority Cultures*, edited by William Kymlicka, 93–122. Oxford: Oxford University Press,

- 1996.
- Walker, Anthony. "Growing Native American Heritage: The Three Sisters." Poughkeepsie Farm Project, 2016. <https://www.farmproject.org/blog/2016/3/31/growing-native-american-heritage-the-three-sisters>.
- Walters, Mark D. "Promise and Paradox: The Emergence of Indigenous Rights in Canada." In *Indigenous Peoples and the Law: Comparative and Critical Perspectives*, edited by Benjamin J Richardson, Shin Imai, and Kent McNeil. Portland: Hart Publishing, 2009.
- "War of 1812." *The Canadian Encyclopedia*. Historica Canada, 2017. <https://www.thecanadianencyclopedia.ca/en/article/war-of-1812-editorial>.
- Weinstein, Martin. "The Ross River Dena: A Yukon Aboriginal Economy." Comox, BC: M.S. Weinstein Consulting Servicesbarber, 1993. <https://docplayer.net/79599812-The-ross-river-dena-a-yukon-aboriginal-economy.html>.
- Wilt, James. "What Does the Peel Watershed Ruling Mean for the Yukon - and Canada?" *The Narwhal*, December 1, 2017. <https://thenarwhal.ca/what-does-today-s-peel-watershed-ruling-mean-yukon-and-canada/>.
- Wolfe, Patrick. "Settler Colonialism and the Elimination of the Native." *Journal of Genocide Research* 8, no. 4 (December 2006): 387–409. <https://doi.org/10.1080/14623520601056240>.
- Yukon Bureau of Statistics. "Yukon Business Survey." Whitehorse, 2018. http://www.eco.gov.yk.ca/stats/pdf/2017_Business_Survey_Report.pdf.
- Yukon College. "Budget 2019: Government of Canada's \$26 Million Investment in New Science Building Marks a Key Milestone for the Future Yukon University." March 19, 2019. <https://www.yukoncollege.yk.ca/news/201903/budget-2019-government-canadas-26-million-investment-new-science-building-marks-key>.
- Yukon First Nations Self-Government, and Mapping the Way website. "Air North, Yukon's Airline Is an Economic Investment and Lifeline for Vuntut Gwitchin First Nation." Mapping the Way, 2019. <https://mappingtheway.ca/stories/air-north-yukons-airline-economic-investment-and-lifeline-vuntut-gwitchin-first-nation>.
- Yukon Forum. "Declaration: Working Together." Whitehorse, 2017. <https://yukon.ca/sites/yukon.ca/files/eco/eco-yukon-forum-declaration-priorities-action-plan.pdf>.
- Yukon Historical and Museums Association. "The Kohklux Map." Whitehorse, 1995. <https://www.heritageyukon.ca/sites/default/files/TheKohluxMap.pdf>.
- Yukon Indian People. "Together Today for Our Children Tomorrow," 1973.
- Yukon Liberals Party. "Platform," 2016. <https://www.ylp.ca/platform>.

Court Cases:

- First Nation of Nacho Nyäk Dun v. Yukon, [2017] 2 S.C.R. 576 (Can.).
- First Nation of Nacho Nyäk Dun v. Yukon, [2014] YKSC 69.
- Beckman v. Little Salmon/Carmacks First Nation, [2010] 3 S.C.R. 103 (Can.).
- Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511 (Can.).

Bills:

Bill C-51, *An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts*. 2nd sess., 41st Parliament, 2015
https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/412C51E.